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≡ HEARING
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≡
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 9, 2002
10:06 A.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, JANUARY 9, 2002

16 10:06 A.M.

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25 Reported by:

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27 Evelyn J. Mizak
28 Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

DAVID OROSCO, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

LESLEE ANN COLEMAN, Member
Industrial Welfare Commission

SENATOR JOHN VASCONCELLOS

JULIANNE BROYLES
California Chamber of Commerce

WILLIE WASHINGTON
California Manufacturers and Technology Association

CARL GUARDINO, President and CEO
Silicon Valley Manufacturing Group

KELLY MILTON
American Electronics Association

1 ANNE DAVIDSON
Solelectron Corporation

2 TOM RANKIN
3 California Labor Federation, AFL-CIO

4 BARRY BROAD
5 California Teamsters Public Affairs Council
6 United Food and Commercial Workers
7 Region 8 States Council
8 Amalgamated Transit Union

9 WILLIAM POWERS
10 Congress of California Seniors

11 BRIDGET BANE, Executive Director
12 Industrial Welfare Commission

13 THARON E. O'DELL, Member
14 State Board of Forestry and Fire Protection

15 HELEN LIBEU, Member
16 Professional Foresters' Examining Committee

17 MARK RENTZ
18 California Forestry Association

19 JULIE A. MacDONALD
20 Forest Resources Council

21 VALERIE NERA
22 California Chamber of Commerce

23 PAUL MASON, Executive Director
24 Environmental Protection Information Center (EPIC)

25 KATHIE SCHMIECHEN
26 Friends of the River

27 BILL ALLAYAUD
28 Sierra Club California

TRACI THIELE
Humboldt Watershed Council

HENRY WARREN ALFORD
Ebbetts Pass Forest Watch

1 MELINDA BOOTH
2 Defenders of Wildlife

3 LANE P. LABBE
4 Sierra Club

5 JODI FREDIANI
6 Citizens for Responsible Forest Management

7 GARY BAILEY
8 Private Citizen, Sunnyvale

9 KENT STROMSMOE
10 Bay Area Coalition for Headwaters
11 Forestry Monitoring Project

12 KEVIN COLLINS
13 Sierra Club, Santa Cruz County

14 LOUIS BLUMBERG, Deputy Director
15 Department of Forestry and Fire Protection
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CHAIRMAN BURTON: Governor's appointees, Leslee Ann Coleman, industry member of the Industrial Welfare Commission.

SENATOR VASCONCELLOS: Mr. Chair and Members, I'm pleased to be here to introduce to you Leslee Coleman.

About two of the Governor's people asked me whether there was someone I could recommend for the Industrial Welfare Commission from Silicon Valley. I wracked my brain and came up with Leslee Coleman.

She was nominated; she was approved. She's served, and I think she's served with integrity. She is an employer position designate.

She has a background in industry with the association locally that helps manufacturing in the county work with the public sector. And in my estimation, watching her and knowing her personally, she has performed faithfully and honestly, has a good mind and a good heart and a clear conscience.

I think she is deserving of your recommendation for confirmation.

CHAIRMAN BURTON: Thank you.

MS. COLEMAN: Thank you, Senator.

Good morning, Senator Burton and Members of the Committee.

Again, I'm Leslee Coleman, and I'm very grateful for your time and your consideration today.

1 I've been very honored to serve on the Industrial
2 Welfare Commission for the past two years because it's really
3 enabled me to utilize my background as a social worker, as well
4 as my experience in the high tech industry, to serve the needs
5 of working people in the State of California.

6 As you know, as John mentioned, this is a
7 stakeholder commission, and I am one of two business groups on
8 the Commission.

9 I remain fully committed to the charter of the
10 IWC, which is to protect the interests of workers and working
11 people in the state.

12 Just briefly by way of background, I began my
13 career as a social worker helping homeless and low-income
14 families find housing after I earned my master's degree in
15 social work from the School of Social Welfare at UC Berkeley.

16 Following that, I worked for the Silicon Valley
17 Manufacturing Group, and I helped pass a tax initiative for us
18 to tax ourselves for transit projects. And I also helped to
19 organize the Silicon Valley's first Housing Trust Fund. In the
20 last two years, that Trust has raised more than \$20 million from
21 voluntary contributions, and we will now be able to help 5,000
22 families in Silicon Valley as a result.

23 Today I am the Worldwide Corporate Giving
24 Director and Director of Government Relations for Solelectron
25 Corporation.

26 We've done a lot of important things during my
27 tenure on the IWC. I'll just highlight two very briefly. Most
28 recently when a proposal for a wage and benefits increase for

1 the sheep herders in California reached a stalemate, I was able
2 to broker a compromise between business and labor, and I cast
3 the tie breaking vote. And so today, now the sheep herders in
4 California are the highest paid of any state in the country.

5 And second, I was a very strong supporter of the
6 minimum wage, and we are now in the process of reviewing a new
7 minimum wage, and we are well ahead of the two-year statutory
8 deadline to do that. And I remain committed to working on that
9 as well.

10 So, I thank you for your time, and I'm happy to
11 entertain any questions.

12 CHAIRMAN BURTON: Senator Johnson.

13 SENATOR JOHNSON: What kind of money does a sheep
14 herder earn?

15 MS. COLEMAN: They were earning \$900 a month, and
16 now they earn \$1100 a month.

17 SENATOR JOHNSON: With term limits, I need to
18 consider these kinds of things.

19 No further questions.

20 CHAIRMAN BURTON: Senator Romero.

21 SENATOR ROMERO: No questions.

22 CHAIRMAN BURTON: Senator Knight.

23 SENATOR KNIGHT: No questions.

24 CHAIRMAN BURTON: Senator Karnette.

25 SENATOR KARNETTE: No questions.

26 CHAIRMAN BURTON: What is the relationship to,
27 and I thought Escutia carried the bill on the Floor for sheep
28 herders.

1 MS. COLEMAN: Yes, thank you.

2 CHAIRMAN BURTON: I think it was an Assembly
3 bill, but she carried it, so what was the relationship to the
4 legislation and the action of the IWC?

5 MS. COLEMAN: Thank you.

6 Actually, we're very grateful. Following the
7 IWC's action, the Legislature took up the issue and codified
8 some -- the wage increase, but also became more specific on the
9 benefits increase for workers. And that legislation was signed
10 into law by the Governor. Passed by the Legislature and signed.

11 CHAIRMAN BURTON: I met with you earlier and with
12 the Executive Director of the IWC who, I think, has a different
13 position than you. You are here representing the industry.

14 Could you explain to me the thinking of the IWC
15 when they ignored the advice of the Attorney General, who was
16 their attorney, and went along with an opinion of a private
17 counsel as far as the issue of vacation time and sick time?

18 In other words, I cannot conceive how they did
19 that.

20 MS. COLEMAN: Okay. I can clarify it.

21 We did receive that letter and reviewed it from
22 the Attorney General, and we agreed with all of the points
23 brought up by the Attorney General.

24 We took a slightly different approach when we
25 acted. In fact, this is a good opportunity to clarify. What we
26 did was, we clarified our intent regarding exempt salary
27 employee deductions through our statement as to the basis of
28 Wage Order Five. And we did that because we had been requested

1 by Labor Commissioner Art Lujan to do so and also received many
2 letters from the public requesting clarification on this issue.

3 CHAIRMAN BURTON: The public or the industry? I
4 mean, people walking down the street just thought to send you a
5 letter?

6 MS. COLEMAN: We did get some employee letters as
7 well as employer letters requesting clarification on the law.

8 Before we took the action, I actually looked back
9 in our history to see if there was any precedent for us to do
10 so. And in fact in the last two years, we had clarified our
11 intent when there was some discrepancy in the law three
12 different times, one time at the request of labor to clarify
13 our intent, and we used the statement as to the basis as our
14 vehicle. So, it seemed to me that there was precedent to do
15 so.

16 We also, when we heard testimony from opponents
17 to our procedure, asked if there was anywhere in the law that
18 specifically prohibited us from taking the action, and there was
19 no specific indication, so we felt comfortable.

20 CHAIRMAN BURTON: Didn't the Attorney General's
21 opinion so state that the action that you were taking shouldn't
22 have been taken?

23 MS. COLEMAN: His opinion outlined specific
24 actions that we couldn't take, but we don't believe that our
25 action violated his opinion.

26 CHAIRMAN BURTON: Again, I am not happy at all
27 with most of what the IWC has done. And I met, you know, with
28 you earlier, with the Executive Director and the staff person,

1 and informed them of that.

2 I believe I would have a lot more problem with
3 you if you were the public member. You are an industry member
4 going along.

5 But again, if the IWC does not address the
6 problems raised in the Attorney General's opinion, part of the
7 \$14 billion deficit will be cured by line iteming them out of
8 the budget and we'll try to find other commissions for people to
9 serve.

10 I believe that the problem with the IWC comes
11 less from the members and more from the administration, knowing
12 full well personally members of the Commission who, in effect,
13 have let me know that some of the things they have done have
14 come directly from the administration, which I happen to think
15 is kind of outrageous for a Democratic administration elected by
16 labor to be moving in so often on behalf of employers and
17 against the wishes or, shall we say, the best interests of the
18 working people.

19 Witnesses in support, please.

20 Thank you John.

21 MS. BROYLES: Good morning, Mr. Chairman,
22 Members. Julianne Broyles from the California Chamber of
23 Commerce, here in support of Leslee Coleman's reappointment as a
24 Commissioner, as an employer representative on the Industrial
25 Welfare Commission.

26 We have had the pleasure of working with her and
27 with the Commission over the last several years, and she has
28 always demonstrated, in the opinion of the employer community,

1 an extreme dedication to looking at all issues that come before
2 her in a fair manner. She has made sure that her viewpoints
3 look at both the employer side and the worker side before she
4 comes to a decision. And really, from the advocate's point of
5 view, you can't ask for any more, at least to approach every
6 issue with an open mind, and she's always done so.

7 We have been happy with some of her votes; we
8 have been unhappy with some of her votes. We at that time had
9 opposed an increase in the minimum wage. Ms. Coleman went ahead
10 and voted for it, making California's minimum the second highest
11 in the nation at this point. But at the same time, she has
12 always tried to make sure that she appreciates the ability and
13 the definite tie-in between jobs and employers and workers'
14 wages. And so, she tries to balance that in every way that she
15 looks at them.

16 For our opinion from the employer community and
17 for the California Chamber of Commerce, that is the best that we
18 can ever ask for in a public appointee in any way, that at least
19 they always make sure that they take all issues into
20 consideration.

21 For that reason we would ask that you support her
22 reappointment as a Commissioner.

23 MR. WASHINGTON: Good morning, Mr. Chairman and
24 Members. Willie Washington with the California Manufacturers
25 and Technology Association.

26 We're also here in support of Ms. Coleman's
27 confirmation or reappointment. We support the items that
28 Ms. Broyles just went over.

1 I've had the experience of working with her and
2 with other members, and it's been particularly gratifying
3 because in the last two years, the IWC has been the busiest of
4 my 14 years of experience here in the Capital working with the
5 IWC. And on many, many opportunities, she has been --

6 CHAIRMAN BURTON: Would you repeat was you said?
7 In your 14 years, it's been what?

8 MR. WASHINGTON: The busiest, among the busiest.
9 More items that they've had to deal with. They've had to do all
10 of the regulations on the wage orders.

11 CHAIRMAN BURTON: They had more to do.

12 MR. WASHINGTON: Right.

13 CHAIRMAN BURTON: I thought you were saying they
14 were friendlier to business.

15 MR. WASHINGTON: Not business, busy, sorry. I've
16 got a little bit of a cold, I apologize. I'm a little bit
17 hoarse this morning.

18 CHAIRMAN BURTON: Where were you on the sheep
19 herder item?

20 MR. WASHINGTON: Actually, we had no sheep herder
21 members.

22 CHAIRMAN BURTON: That's more in the animal
23 husbandry.

24 MR. WASHINGTON: In either case, Mr. Chairman,
25 I'd just like to say that I really applaud the fact that on
26 numerous occasions when the issue was pretty sticky, and tempers
27 and things of that nature was sometime getting pretty
28 vociferous, and so forth, that she remained open and calm, and

1 continued to deal with both sides of the issue.

2 I think the experience that she gained and that
3 she brought with her to this particular position has played very
4 well for the Commission. I think she's a major asset to the
5 Commission, and I urge you this morning to reconfirm her.

6 Thank you.

7 CHAIRMAN BURTON: Next.

8 MR. GUARDINO: Good morning, Chairman Burton and
9 Members. My name's Carl Guardino.

10 CHAIRMAN BURTON: You're conflicted. Out the
11 door.

12 MR. GUARDINO: I'll be very brief.

13 I'm President and CEO of the Silicon Valley
14 Manufacturing Group. On behalf of the Manufacturing Group, we
15 are pleased to ask that you thoughtfully consider reconfirming
16 Leslee Ann Coleman to the IWC. We think she has continued to
17 bring balance even though it is a stakeholder's seat, to try to
18 hear both sides and act according to her conscience.

19 Thank you for your consideration.

20 MS. MILTON: Good morning, Senator Burton and
21 Members. Kelly Milton on behalf of the American Electronics
22 Association.

23 We support the reconfirmation of Leslee Coleman
24 to the IWC.

25 Thank you.

26 CHAIRMAN BURTON: Other witnesses in support?

27 MS. DAVIDSON: Good morning, Members of the
28 Commission. My name is Anne Davidson, and I work for Solelectron

1 Corporation.

2 We are here in support of Leslee's
3 reconfirmation. I know personally that Leslee works very hard
4 and very diligently in her role as Commissioner. She is open
5 minded and fair, and works very hard to look at all sides of the
6 issues and remain objective. And we are supportive of her
7 reappointment.

8 Thank you.

9 CHAIRMAN BURTON: Witnesses in opposition.

10 MR. RANKIN: Good morning. Tom Rankin with the
11 California Labor Federation.

12 As has been pointed out, the IWC has had somewhat
13 of a rocky history recently. Under the Wilson administration
14 they were defunded basically because they did not comply with
15 their purpose, which was to protect the interests of workers.

16 I've never before heard this morning -- before
17 this morning heard of it referred to as a stakeholder
18 commission.

19 CHAIRMAN BURTON: That means it's the way it's
20 laid out. It's two labor, two industry, and public.

21 MR. RANKIN: Right, yeah.

22 But the overall purpose of the Commission, of
23 course, is governed by the statute, and the stakeholders, if you
24 want to call them that, are obligated, I believe, to operate
25 within that mission.

26 The reason we're opposing Leslee Coleman is
27 because of the most recent action of the Industrial Welfare
28 Commission. This problem for employers started sometime ago

1 last year when the Labor Commissioner issued an interpretation
2 of the overtime law, which was passed by the Legislature a
3 couple years ago, and they were very unhappy with it. And of
4 course, the Labor Commissioner -- it wasn't the Labor
5 Commissioner. It was the counsel for the Labor Commissioner --
6 ended up losing his job over the issue. And the IWC in the
7 face of a Legislative Counsel's opinion --

8 CHAIRMAN BURTON: The Labor Commissioner lost the
9 job over what?

10 MR. RANKIN: No, the counsel for the Labor
11 Commissioner.

12 CHAIRMAN BURTON: Lost the job over what?

13 MR. RANKIN: Over his opinion on this issue that
14 we're dealing with here, with the vacation --

15 CHAIRMAN BURTON: How did the person lose the
16 job?

17 MR. RANKIN: As far as I understand, he was
18 demoted. He didn't actually lose his job. He was demoted.

19 CHAIRMAN BURTON: Demoted by whom?

20 MR. RANKIN: By the administration.

21 CHAIRMAN BURTON: This administration demoted the
22 lawyer because of the law?

23 MR. RANKIN: Because of his opinion.

24 At any rate, it's a touchy issue, but the IWC
25 acted in defiance of Legislative Counsel's opinion, the Attorney
26 General's opinion, the advice of their attorney who was asked at
27 the meeting whether or not they should take this action. And by
28 doing so, they really called into question the whole credibility

1 of the Industrial Welfare Commission.

2 One of the processes which they have is, they
3 have wage boards that are half labor and half employers that are
4 set up to deal with specific issues. In this instance, a wage
5 board had met and actually had agreed unanimously on both sides
6 to change a wage order to solve a particular employer problem
7 that employers wanted dealt with. Both labor and management
8 agreed to that. This issue was back for a final action by the
9 Industrial Welfare Commission. They decided they'd pick this
10 wage board issue and insert something into it to the benefit of
11 the employers which had never even been discussed in the wage
12 board. That totally ruins the wage board process.

13 I have sat on a number of wage boards. I
14 wouldn't want to sit on a wage board if I knew what we were
15 going to do unanimously in this case was going to be taken up by
16 the IWC and they were going to add something to it that we never
17 even talked about. I mean, it's just a disregard for the
18 procedures that have been there for years and years.

19 And it's not only that. You know, they're acting
20 in disregard of all the legal opinions: We are proceeding to
21 sue the IWC over what they did on this issue.

22 But at any rate, that's the reason for our
23 opposition. We just think this action's unconscionable.

24 CHAIRMAN BURTON: Thank you.

25 MR. BROAD: Barry Broad on behalf the Teamsters,
26 United Food and Commercial Workers, Machinists, and the
27 Amalgamated Transit Union.

28 I think Tom has pretty much said it. I think

1 this is our forum for protesting actions that so contort the
2 process, so fly in the face of how to get things done, that it
3 undermines the basic credibility of that institution.

4 I have been on those wage boards. I've appeared
5 before the IWC for 20 years. I was on the IWC. Never has the
6 IWC so flagrantly disregarded its own processes.

7 And you know what? It would be wrong whether it
8 benefitted the employers or whether it benefitted labor. It was
9 an attempt to repeal a statute by administrative fiat, ignoring
10 the process altogether.

11 It would be as if a court, five years after a
12 decision was made, a different court, changed in another
13 decision a rationale of another case and made it binding on the
14 case when the issue wasn't even before them. It was really
15 quite, quite a departure.

16 CHAIRMAN BURTON: Very bad example. The U.S.
17 Supreme Court in Map vs. Ohio had the Fourth Amendment
18 applicable to the states in a case where the issue wasn't even
19 before them. Bad example. Courts do that. The IWC shouldn't
20 do that, but courts, that's what they do.

21 Map vs. Ohio. Dolly Map was arrested for
22 something; she had some dirty books. And on their own motion,
23 they took the issue of search and seizure and expanded it to the
24 states, which I hope impresses most of the lawyers and law
25 students there, that I would remember such a thing.

26 I happen to know somebody who knew Dolly Map.

27 [Laughter.]

28 SENATOR JOHNSON: Well, you impressed me.

1 CHAIRMAN BURTON: You get the point.

2 MR. BROAD: You just wanted to give me a hard
3 time, I get it.

4 [Laughter.]

5 CHAIRMAN BURTON: No, I was showing off myself.

6 MR. BROAD: In any case, this is an issue that
7 needs to be dealt with by the Legislature. There's a bill in
8 the Legislature. That's where it needs to be dealt with.

9 They, in this process, I'm not even sure they
10 know the sweep of what they did, but they in effect repealed a
11 California Supreme Court decision in an area that they don't
12 regulate dealing with a part of the Labor Code that isn't in
13 their jurisdiction. They made a very, very sweeping change.
14 That's why the matter is going to go to litigation and is going
15 to be resolved there.

16 I just don't believe that any administrative
17 agency should so clearly depart from its obvious processes and
18 contort them to reach some kind of a conclusion. It was a sort
19 of stretch beyond credibility. So, that's the reason.

20 To raise the issue, I served with Leslee Coleman.
21 She's a decent person. She was doing, you know, what she was --
22 trying to get the result that the employers wanted, and I get
23 that, but it needs to be done without totally destroying the
24 processes of this board.

25 CHAIRMAN BURTON: Thank you.

26 Tom, thank you.

27 MR. POWERS: Good morning Bill Powers for the
28 Congress of California Seniors.

1 We also support the position of labor on this
2 issue. Many of our members are retired union members. We have
3 concerns about anything that'll downgrade the ability of labor
4 to function, and we support their position and urge that you
5 reject this confirmation.

6 Thank you.

7 CHAIRMAN BURTON: Can we have the Executive
8 Director come up for a minute, please.

9 MS. BANE: Senator, Bridget Bane, Executive
10 Director.

11 CHAIRMAN BURTON: I want to put it on the record
12 here. I mentioned a meeting.

13 It defies logic that a state agency would ignore
14 the advice of the state's attorney and take the advice of
15 private counsel. It just doesn't make any sense, because
16 that's what the state's attorney does, advise state agencies.
17 Private counsel advises whoever paid them. And by and large, if
18 they're lawyers, they look for ways to stretch or do things.

19 But this again is an issue that if the IWC does
20 not take care of this issue, and take care of it forthwith, as
21 far as I'm concerned they're going to be defunded. And we're
22 looking for a lot of ways to save money, and this ain't a hell
23 of a lot of money, but you know, a couple thousand and a couple
24 million here and there goes.

25 I just wanted to have that on the record, okay?

26 MS. BANE: I understand, Senator. Thank you.

27 CHAIRMAN BURTON: Pleasure of the Committee?

28 SENATOR KARNETTE: Senator, I'd like to say

1 something that I think is important here.

2 I looked at the purpose of this commission, and
3 it's to protect workers.

4 I guess I'm not a lawyer. I think laws exist for
5 people, not people for laws. And when I listen to people, I try
6 to see their motives.

7 And it says, "The Commission is responsible for
8 setting minimum wages," which she supported, "maximum work
9 hours, standard working conditions to protect the health and
10 welfare of employees."

11 And when I talked to her earlier and she
12 explained this statement as to the basis, and the real issue --
13 and I understand. I'm a labor person, and all the labor people
14 know that. I'm usually a one hundred percent vote for labor
15 issues. I was in a labor union myself.

16 But I also know that workers are people first,
17 and they have to feed their families. And when I heard of her
18 reason between shutting down a plant for a week versus a month,
19 and I understand labor's position, and I think it should be
20 handled in the court. I agree. It should be clarified.

21 But when it makes a difference between whether a
22 person's going to lose a job or have a vacation pay, it made a
23 difference to me. I'm seeing it as a human being.

24 I just feel like it's hard here. And I know what
25 labor's saying, and I support their position in a way, but as
26 you said, maybe they can settle it, and I'm hoping they can,
27 because I'm going to support this.

28 CHAIRMAN BURTON: Call the roll.

1 SECRETARY WEBB: Senator Karnette.

2 SENATOR KARNETTE: Aye.

3 SECRETARY WEBB: Kanette Aye. Senator Knight.

4 SENATOR KNIGHT: Aye.

5 SECRETARY WEBB: Knight Aye. Senator Romero.

6 SENATOR ROMERO: Aye.

7 SECRETARY WEBB: Romero Aye. Senator Johnson.

8 SENATOR JOHNSON: Aye.

9 SECRETARY WEBB: Johnson Aye. Senator Burton.

10 CHAIRMAN BURTON: Aye.

11 SECRETARY WEBB: Burton Aye. Five to zero.

12 CHAIRMAN BURTON: Did you have anybody to
13 introduce? Did you have any family here?

14 MS. COLEMAN: Nope. All in Southern California.

15 CHAIRMAN BURTON: State Board of Forestry, Tharon
16 O'Dell.

17 MR. O'DELL: Good morning, Senator Burton,
18 Members.

19 My name is Tharon O'Dell. I'm the Timberlands
20 Resources Manager for Simpson Timber Company in Arcada,
21 California. I've been a forest manager for --

22 CHAIRMAN BURTON: And I might add, a stakeholder
23 on the board.

24 MR. O'DELL: Pardon me, sir.

25 CHAIRMAN BURTON: You had to be here for the last
26 hearing. Industry rep.

27 MR. O'DELL: Industry rep, yes.

28 I've been a manager for Simpson for about nearly

1 18 years. Before that, I had technical and professional
2 appointments in the hardwood regions in the east, Colorado
3 mountains, Rocky Mountains, the Northwest, Oregon and
4 Washington.

5 I've been a licensed professional forester since
6 the inception of the Licensing Act in the early '70s. I moved
7 to California as an Assistant Professor at Humboldt State
8 University in 1971.

9 At Simpson, my responsibilities under my
10 jurisdiction include managing a forest nursery. We have an
11 output of seedlings of about two million a year. Also the
12 research, the tree improvement in genetics. Also I supervised
13 the Forest Inventory and Planning Department and the Wildlife
14 and Fisheries Department. At the height of the season, we have
15 about 25 fisheries and wildlife people on staff, and a decade
16 ago we didn't have any, which shows that forestry in California
17 has changed in the recent past.

18 The enabling legislation, the Z'Berg-Nejedly
19 legislation, sets the policy for forest practices in
20 California. That law declares in part that it's the policy of
21 the state to encourage prudent and responsible forest
22 management, calculated to serve the public's need for timber and
23 other forest products, while giving consideration to the
24 public's need for watershed protection, fisheries and wildlife,
25 and recreational opportunities like in this and in future
26 generations.

27 I believe the Board that I've served as a part of
28 has worked very hard toward accomplishing those objectives. This

1 would be my third appointment to the Board as a member.

2 Since my first appointment in 1993, the Board has
3 passed a variety of rule packages governing forest practices on
4 state and private lands within the state borders, and I'm very
5 proud of the accomplishments of that body, particularly in the
6 areas of watershed, wildlife, fisheries, soils, archeology, and
7 in 1994, we passed a silvacultural package which dealt with
8 sustained yield.

9 CHAIRMAN BURTON: Could I ask you couple
10 questions?

11 MR. O'DELL: You certainly can, sir.

12 CHAIRMAN BURTON: One, I for one have several
13 letters that are very unhappy with the Board. And actually,
14 it's kind of interesting that you, as an industry
15 representative, are a hell of a lot more enlightened than the
16 public representatives on the Board. Maybe it's because you at
17 least understand the issues, although you come from industry.

18 MR. O'DELL: Sure.

19 CHAIRMAN BURTON: But the people that I've talked
20 to, and this may be damning you with faint praise, they say for
21 an industry representative, you do as good a job as can be
22 expected, and as I said, a better job than several of the public
23 members of the Board.

24 Having said that, what's the Board of Forestry
25 doing about the problem with the oaks?

26 MR. O'DELL: Senator Burton, that is a serious,
27 very serious question.

28 That problem that we have, it's now known as

1 sudden oak death. It's caused by a pathogen, a pathogenic
2 organism called *Phytophthora ramorum*. That's a virulent genus
3 of pathogen that not affects just oaks, but will affect many
4 other plant species as well. It's been implicated in the potato
5 famine. It affects a tree in our North Coast country called
6 coffee berry cedar.

7 CHAIRMAN BURTON: What are you doing about it?
8 What's the Board doing, if anything?

9 MR. O'DELL: We're doing all that we can because
10 we've been cautioned to go slowly until we find out what it is
11 by the Oak Task Force.

12 The Board has become engaged in the Oak Mortality
13 Task Force; that's academics, industrial people, agricultural
14 people, and regulators. Money's being funneled in, as you know,
15 from federal as well as state sources to define what this
16 problem is; how large is it; and what in the world are we going
17 to do about it. Moreover, what are all the kinds of plants that
18 will be affected by it.

19 Right now there's at least 15 host species, and
20 may be growing every day.

21 CHAIRMAN BURTON: You seem to know a fair amount
22 about it. Let's just assume, because it's kind of a real
23 problem in Marin County that I represent, what damage is there
24 if you focus in and try to do something about sudden oak death?
25 I mean, jump into the potatoes later; jump into the North Coast
26 later.

27 Go slow? If you can solve the problem of one
28 type of tree, or one type of vegetation, or whatever, are we

1 going to wait until you figure out how to solve all the problems
2 of all the trees and vegetation in the world? By then, you
3 won't have to worry about it because there'll be nothing to
4 solve because it'll all be dead.

5 MR. O'DELL: Perhaps I misspoke. Go slow by
6 learning what the pathogen is; how do you name it; how does it
7 distribute itself; what are the host species that might be
8 affected by this particular disease organism? That's what I
9 meant by going slow.

10 The Board passed a Zone of Infestation which
11 controls the movement of forest products between --

12 CHAIRMAN BURTON: So, you can't do anything to
13 prevent it until you have all these things, or attempt to either
14 prevent it or cure it until these questions are answered?

15 MR. O'DELL: You can't do anything to prevent it
16 if you're not quite sure just how broad the infestation is. Or
17 what you also are faced with is the kinds of treatments that you
18 might apply toward control could, in fact, distribute it
19 further.

20 So, you at least have to understand the organism
21 before we can do any kind of --

22 CHAIRMAN BURTON: How long have been looking into
23 it?

24 MR. O'DELL: They just named it in 2001. They
25 just found out what the organism was because it was new and
26 hadn't been identified before. So, this is very new science,
27 Senator, and people are working desperately to try to find out
28 all about this.

1 CHAIRMAN BURTON: So, you're not throwing the
2 ball to the local government. The Board is trying --

3 MR. O'DELL: Very' actively trying.

4 CHAIRMAN BURTON: Thank you.

5 The National Marine Fisheries has concluded that
6 our forest practice rules are inadequate to protect salmon.
7 Federal EPA's refused to certify the practice rules as the best
8 management practices.

9 How are those things going to be addressed?
10 Again, as I said, the people that speak pretty highly of you
11 just feel that in a way we would do better without the Forestry
12 Board because you aren't doing anything.

13 One, there's been a lot of vacancies. The
14 Governor has yet to fill all the slots.

15 But two, what they're doing is nothing.

16 MR. O'DELL: Could I take your points in reverse
17 order, particularly about the EPA?

18 There's a long history to that, as you know. In
19 1977, we began working, the Board of Forestry, on EPA's concern
20 about best management practices. That gave rise to the 208
21 times in the mid-'80s.

22 After that, the Board set up the Monitoring Study
23 Group, which has now been elevated as an advisory board --
24 committee to the Board -- and that deals with monitoring. And
25 that was the big missing element and one of the reasons EPA did
26 not certify forest practice rules as BMPs. So, that point has
27 been addressed, I think. That's a big step.

28 The Monitoring Study Group became very active.

1 We've presented our strategic plan to the Board of Forestry in
2 the year 2000.

3 In 1996, we implemented a monitoring program
4 looking at the effectiveness --

5 CHAIRMAN BURTON: What happened to what you sent
6 to the Board in 2000?

7 MR. O'DELL: I didn't understand you, sir.

8 CHAIRMAN BURTON: I thought you said that you
9 sent something to the Board in the year 2000.

10 MR. O'DELL: The strategic plan for the
11 Monitoring Study Group Committee.

12 CHAIRMAN BURTON: What did the Board do?

13 MR. O'DELL: The Board looked -- that was a
14 report, and it was accompanied by a report. Our report said we
15 had, since 1996, started looking at the effectiveness of the
16 forest practice rules. That was one of the objections of the
17 EPA.

18 We have found that the forest practice rules, if
19 implemented according to how the rules are written and enforced
20 properly, give very few problems. What we did find, and we
21 suspected, but we have since accepted, is that roads and
22 crossings are the greater sediment contributors from forest
23 practices. And so, we have continued the monitoring, and the
24 next draft of the report will show the same thing. Even though
25 we're taking steps to tighten up forest practice rules and
26 minimize road problems as well as increased drainage structures,
27 the problem still exists.

28 What we haven't found yet is enough time and

1 enough winter storms to pass to see what the roads and crossings
2 are doing since the implementation of the more recent threatened
3 and impaired watershed rules that were passed in March and
4 implemented in July of 2000. Enough time has to elapse to get
5 winter storms on these properties --

6 CHAIRMAN BURTON: I think you got enough winter
7 storms this year.

8 MR. O'DELL: Well, we really -- we got a lot of
9 rain, but not many storms.

10 CHAIRMAN BURTON: We sure got a lot of storms in
11 the Bay Area. It didn't get up north?

12 MR. O'DELL: Well, we get storms and storms. I'm
13 looking for five to twenty-year events to really test these
14 structures that we've put in. We get a lot of rain. We're 130
15 percent of normal.

16 CHAIRMAN BURTON: You want a 20-year event, and
17 if it takes six years for that to happen --

18 MR. O'DELL: It could take 20 years for that to
19 happen.

20 CHAIRMAN BURTON: Then we'll all be dead before
21 they do anything.

22 MR. O'DELL: I've got a longer vision of life
23 expectancy than that.

24 [Laughter.]

25 CHAIRMAN BURTON: Well, how about Sierra
26 Pacific's scale of clearcutting, what you're allowed under the
27 current practices rules?

28 MR. O'DELL: Well, management practices differ by

1 companies in their application to silvaculture of their
2 properties.

3 CHAIRMAN BURTON: I'm sure of that. But people
4 driving the highway, their speed varies by how heavy the foot is
5 on the gas. But if the speed limit's 65, if you pass it you get
6 a ticket.

7 MR. O'DELL: Agreed, if there's an officer near
8 by.

9 What I would like to address about SPI's
10 application, SPI has managed those properties -- well, we know
11 they've collected these properties over time. Some of them are
12 in better shape than others. And much of the activity that
13 SPI's directed towards some of these stands is to -- they need
14 to rotate the stand. The trees that are out there are not the
15 very best gene pool on these sites. So, much of what they were
16 doing would actually have rotated those trees off those pieces
17 of property, and they would have planted much more vigorous,
18 better adapted genetic stock to those sites. And people took
19 exception to that because it was different than they had
20 normally expected in their view sheds.

21 I think, to give credit to SPI, in the areas
22 where they were having these difficulties, they met with the
23 people, and I think they resolved the problems. They changed
24 their management style that would have negative, at least
25 alleged negative, effects on people's welfare, and I think
26 they've made concessions to that.

27 CHAIRMAN BURTON: Well, I think, and I don't
28 know, but there is an initiative being proposed to almost ban

1 all clearcutting. A poll over a year ago indicated that even in
2 the timber country, that in those counties, that there would be
3 overwhelming support for that. And many people who are very
4 strong environmentalists think the initiative's a little bit far
5 reaching, shall we say, but nevertheless, would have an
6 opportunity to pass.

7 I think that if the Forestry Board doesn't do
8 something intelligent, and probably led by people like yourself
9 that at least enlighten people in the industry, that they're
10 going to end up with something that they definitely don't want
11 and may even be counter-productive.

12 I would just kind of commend that to somebody,
13 because I look at the Forestry Board to be honest, the same way
14 I'm looking at IWC. If they don't do anything, who needs it?
15 We'll just hire you as a consultant, steal you away from Simpson
16 and have you solve the oak problem in Marin.

17 MR. O'DELL: I truly appreciate your confidence
18 in me in that regard.

19 CHAIRMAN BURTON: Senator Johnson.

20 SENATOR JOHNSON: No questions.

21 CHAIRMAN BURTON: Senator Romero.

22 SENATOR ROMERO: No questions.

23 CHAIRMAN BURTON: Senator Knight.

24 SENATOR KNIGHT: No questions.

25 CHAIRMAN BURTON: Senator Karnette.

26 SENATOR KARNETTE: I have one question.

27 I'm concerned about the overall affect to the
28 watershed. You were saying earlier that each company has its

1 own rules and requests.

2 But you have to look at this problem, and I think
3 Senator Burton said this as well. There was a report. I think
4 it was the Little Hoover Commission.

5 What I'm concerned about, it's not looked at as
6 the cumulative watershed effects. So, I don't care what
7 company it is, the water runs the way it runs, and things
8 happen.

9 How does the Board handle that overall approach
10 to watersheds?

11 MR. O'DELL: I agree with you, water always runs
12 down hill, and it doesn't respect property boundaries either.
13 That's very true.

14 At the Board level, we have -- part of our rules
15 is a cumulative watershed assessment component that every timber
16 plan, timber harvest plan that comes in, needs to do an area
17 assessment area to make sure that we've addressed the kinds of
18 things that we're going to apply to the landscape and how it's
19 going to respond to that.

20 Also, we have [sic] obligated to look for past
21 practices, things that's occurred in the watershed, as well as
22 forward looking. A part of our plan is that reasonably
23 predictable projects that's going to occur, and we evaluate that
24 and make a conclusion of whether or not the kinds of things that
25 we're going to apply to the landscape is going to have a
26 significant adverse affect on that.

27 SENATOR KARNETTE: Do all the companies --

28 MR. O'DELL: Yes, they do.

1 SENATOR KARNETTE: They have to obey.

2 MR. O'DELL: Yes, they do.

3 SENATOR KARNETTE: So, you really do have
4 control.

5 MR. O'DELL: Absolutely. We have control of
6 that.

7 But more importantly than that, than just having
8 the custodial responsibility, the review 18 agencies also review
9 this. And so, before it ever gets to the Director for
10 signature, the review agencies will have looked at it. Fish and
11 Game will have looked at it; Mines and Geology would have looked
12 at it for geological instability problems; the North Coast, in
13 our case, Water Board, or any of the Regional Water Board people
14 would look at it. And if they have problems with that, then of
15 course the Director can't sign it until it's resolved.

16 So, many of these plans are not, as one might
17 think, fill out the paper, submit it, and it's automatically
18 approved. Some of them are very, very difficult plans, and some
19 of them are not approved at all.

20 So, watershed, cumulative watershed effects are
21 extremely important issues at the Board level, at the timber
22 harvest planning level, and at the forest management level. And
23 we have always got improvements to make, but we have made such
24 large gains from where we started, I'm terribly pleased with the
25 accomplishments we've made. And I think the Board works very
26 hard and has stayed on target and on focus to make sure that we
27 improve that particular asset.

28 We have as an additional part of this now, we

1 have the salmonid issue where various basins that have water
2 often have fish, from the North Coast particularly all the way
3 down to the San Francisco area, we have listed fish to worry
4 about. So, that actually enhances the amount of scrutiny, not
5 only by the state agencies but by National Marine Fisheries, to
6 make sure that the kinds of plans that we're submitting and the
7 Director is approving do not in fact take fish.

8 As you also know, the Fish and Game is looking at
9 this particular fish for listing at the state level, and that
10 decision, I think, is due in April. And that again will be an
11 issue that we'll have to handle at the state board level if, in
12 fact, the State Fish and Game does list that fish in the spring.

13 SENATOR KARNETTE: Thank you.

14 MR. O'DELL: So, animals really do drive a lot of
15 what we do, even though we're called a Forestry Board.

16 CHAIRMAN BURTON: Witnesses in support.

17 MR. O'DELL: Am I excused?

18 CHAIRMAN BURTON: You're excused.

19 MS. LIBEU: I brought my leg aid and forgot my
20 hearing aid.

21 Are you people familiar with something called the
22 Professional Foresters' Examining Committee?

23 CHAIRMAN BURTON: We know of its existence.

24 MS. LIBEU: My name is Helen LIBEU, L-i-b-e-u,
25 Sonoma County, California.

26 Anyway, it's an eight-member body which is
27 licensed complaints against foresters. It has other duties,
28 too. And that means that I am the voice of the public on the

1 thing, just little old pitiful me, with seven big, grown male
2 foresters. So, I am always happy to have some support from the
3 foresters on the committee, because as you noticed, like
4 lawyers, they close ranks and they don't want to, you know.

5 So, one of the reasons I come to talk about my
6 experiences with Tharon is that he was on that same committee
7 when I was. I still am. And he on occasion gave me support in
8 my position against some of the sacred brethren, and you don't
9 forget -- I don't forget things like that.

10 Also, he was always interested in
11 professionalism. If we're going to have foresters, having
12 professional foresters be professional is desirable.

13 I notice in the Sierra Club propaganda that has
14 been widely distributed that Tharon is convicted of having voted
15 for this interim watershed management plan.

16 But what they do not say in the propaganda is
17 that it passed the Board 8-0, amid a love-fest where the
18 Department of Fish and Game and our 800-pound gorilla, the
19 National Marine Fisheries Service, everybody joined hands and
20 loved it, except one voice from the environmental community, a
21 voice which I respect and admire. But I don't think that when
22 NMFS and Department of Fish and Game, various other
23 organizations speak, that their expertise should be out weighed
24 without any grounds being furnished.

25 The thing is, Tharon is in an industry seat. I
26 don't think he should be expected to be Tinker Bell or Peter
27 Pan, or something, in a vote against industry positions.

28 The question is, what has he done specifically in

1 addition to being an industry person that he should not have
2 done as an industry member? And nobody in the -- nothing in the
3 Sierra Club propaganda that I've read makes any specifics.
4 You'd think they'd never been to Board meetings. They don't
5 show any evidence of knowing what went on that he was either for
6 or against, and why that was bad. It's just this watershed
7 management thing is the piece of evidence.

8 And as I say, the Board voted for it, 8-0,
9 including our white knight in armor, Bob Heald. Bob Heald
10 embraced this package with enthusiasm and is currently revising
11 the language after OAL got excited. But Bob Heald likes it, and
12 NMFS likes it, the Department of Fish and Game likes it. So, I
13 don't think it's a particularly vicious crime to have supported
14 it.

15 CHAIRMAN BURTON: So, you're in support of the
16 confirmation?

17 MS. LIBEU: I certainly would. I'm grateful for
18 his help in the years I was on the PFEC, where it was just
19 little old me.

20 CHAIRMAN BURTON: Well, I think you probably
21 stood up is to those guys. Thank you very much.

22 MR. RENTZ: Senator Burton, Members of the
23 Committee, Mark Rentz, California Forestry Association. Thank
24 you for the opportunity to come before you.

25 Senator Burton, I'm impressed how you recalled
26 Map vs. Ohio. I haven't heard that terms since law school
27 myself.

28 Obviously, CFA and our members support Tharon's

1 appointment as industry representative to the Board of
2 Forestry. I don't think there's much more for me to say that
3 Helen hasn't already summarized, except to just reinforce the
4 fact that I think Mr. O'Dell brings a set of very impressive
5 credentials to the Board of Forestry.

6 Not only does Tharon have an extensive technical
7 background from numerous years in the field and management
8 positions, as he alluded to, but I think equally important for
9 the Committee to be aware of is the fact that Tharon also has
10 extensive academic experience. He is a Ph.D. and has taught,
11 too, at one time, so he understands the scientific aspect of a
12 very complex and complicated management arena that we all work
13 in, known as forestry.

14 Finally, in my six years of attending Board of
15 Forestry meetings, I have found Mr. O'Dell to be balanced in his
16 approach to numerous complex issues that the Board has taken on
17 and continues to address.

18 And finally, I do find that Mr. O'Dell has given
19 objective and equal consideration to all parties' perspectives
20 on these issues.

21 We would encourage the Committee to confirm
22 Mr. O'Dell's appointment.

23 Thank you very much.

24 MS. MacDONALD: Julie MacDonald for the Forest
25 Resources Council.

26 We support the confirmation of Tharon O'Dell. We
27 think he has the academic training and the practical experience
28 necessary to understand and address the issues that are going to

1 be coming before the Board, and we urge your confirmation of
2 this appointment.

3 MS. NERA: Valerie Nera for the California
4 Chamber of Commerce.

5 We're here to support Mr. O'Dell's confirmation
6 to the Board. My members have found him very easy to work with,
7 very knowledgeable about forestry issues, but also very
8 cognizant of the impacts that forestry rules have on rural
9 economies.

10 CHAIRMAN BURTON: Witnesses in opposition.

11 MR. MASON: Good morning, Mr. Chairman and
12 Members of the Board. My name is Paul Mason. I'm the Executive
13 Director of the Environmental Protection Information Center in
14 Humboldt County.

15 We've been working on private land forest issues
16 for almost 25 years, and over the course of that time have
17 attended the Board of Forestry almost monthly for that entire
18 time. So, we have a pretty comprehensive perspective on how the
19 Board of Forestry interfaces with state forest regulations.

20 I take issue with some of that which Mr. O'Dell
21 portrayed as their major initiatives towards protecting salmon
22 on the North Coast. As you may be aware, National Marine
23 Fisheries Service listed coho salmon back in 1996, listed
24 chinook salmon in 1999, listed steelhead in 2000. You know, the
25 condition of salmon species on the North Coast is in pretty
26 serious -- a pretty serious state of affairs. Coho salmon have
27 been extricated, completely lost from half of their historic
28 streams. We probably only have five or six streams in Northern

1 California where they still have genetically viable, relatively
2 robust runs.

3 As you've probably heard, the National Marine
4 Fisheries Service has continued to say, even after the modest
5 rule changes that the Board of Forestry has allowed over the
6 last few years, that the state's forest practice rules are
7 inadequate.

8 As Mr. O'Dell has said, you know, that the
9 Monitoring Study Group has been studying these issues, and now
10 wants to wait for another five or twenty years of rains to see
11 whether the incremental improvements, which both the National
12 Marine Fisheries Service, the federal agency responsible for
13 salmon, and the Environmental Protection Agency have both agreed
14 is not adequate to protect salmon. So, it's sort of a
15 wait-and-see while the salmon continue to go extinct approach.

16 And while I would agree with you that some of the
17 public members on the Board are a much bigger problem because of
18 the composition of the Board, when you have three industry in
19 one range, which almost always vote as a block, when you've got
20 one public member that also consistently votes with the
21 industry -- in the past that's been Ray Flynn, currently that's
22 Paula Ross -- that creates this roadblock to actually making any
23 change to improve the forest practice rules to the point where
24 some of our native species wouldn't go extinct.

25 So basically while I would agree with you that
26 Mr. O'Dell actually understands some of the issues, because of
27 his role with the industry, he's unwilling to make any of the
28 changes. He has sort of a knee-jerk response that any

1 strengthening of the rules is inherently a bad thing; we'll
2 just wait and see, wait and see, wait and see; do as little as
3 possible.

4 Granted, this is an industry representative seat.
5 I think it would be more appropriate for the Governor to appoint
6 perhaps a small landowner or an industrial timber owner that is
7 a little more forward thinking.

8 CHAIRMAN BURTON: Charley Hurwitz, why not?

9 MR. MASON: He'd be only nominally different,
10 maybe. No, that might be a little bit unfair.

11 But somebody from one of the industrial timber
12 companies that's been certified, or, you know, another forest
13 practice -- forest products company that isn't strictly into
14 clearcut, burn, herbicide, clearcut, burn, herbicide, which is
15 the general regime that Simpson Timber Company uses on their 400
16 and some odd thousand acres in Northern California.

17 So, the Environmental Protection Information
18 Center does oppose his confirmation.

19 CHAIRMAN BURTON: Next.

20 MS. SCHMIECHEN: Thank you, Mr. Chair and
21 Committee Members. My name is Kathie Schmiechen. I represent
22 Friends of the River.

23 Part of our mission is to protect the rivers of
24 California, and I will not be using Map vs. Ohio in my testimony
25 today.

26 We are interested in the Board of Forestry
27 confirmations because of the impact of silvaculture on water
28 quality and fish species. As you may know, there's a strong

1 connection between water quality and timber harvest practices.

2 In the most recent U.S. EPA report on impaired
3 water bodies, there's 27 water bodies, including most North
4 Coast rivers and Lake Tahoe, that are classified as polluted due
5 to silvacultural practices because of excessive sediment
6 loading. Logging and associated road building can contribute
7 significant amounts of silt and sediment to adjacent rivers and
8 streams. This may result in serious impacts on fish and other
9 species, as well as to downstream property owners who may
10 experience increased flooding due to sediment loading.

11 Currently, all but three of California's salmon
12 and steelhead species are listed as threatened or endangered.
13 Positive changes in timber harvesting practices could make a big
14 difference to these imperiled species.

15 Though all Board members, regardless of their
16 background, are required to act in the public's interest, this
17 person has not shown an inclination to do so. Confirming this
18 particular appointee and the other appointees at a future
19 meeting may solidify the grip of the timber industry on the
20 Board and subject California's water supply, rivers and bays, to
21 further abuse. We believe that other candidates might do a
22 better job.

23 Thank you.

24 MR. ALLAYAUD: I'm Bill Allayaud, representing
25 Sierra Club California.

26 I'd like to thank Senator Burton and the
27 Committee for delaying this confirmation hearing into this
28 year.

1 We are here to oppose this confirmation.

2 Senator Burton's comment about maybe we'll have
3 to wait until we're all dead reminds me of the approach the
4 State Water Board is using on water quality, which is, let's let
5 the voluntary approach, give it a chance to work. And they've
6 been in this mode for a long time. They've showed no
7 inclination to get out of this mode, and I think it's the same
8 with the Board of Forestry. Let's just wait and see what
9 happens.

10 Meanwhile, water quality's deteriorating, species
11 are becoming extinct, view sheds are being ruined.

12 I'm glad Senator Karnette raised this issue of
13 cumulative watershed impact. I think that's key here. A water
14 quality expert who works for a state agency on the North Coast
15 told today me, I said, "Is clearcutting bad per se?"

16 And he said, "Not necessarily, but the Board is
17 approving too much, too fast, in every watershed, and there's a
18 cumulative impact here." And he also thinks they should get
19 further away from the streams, you know, a bigger buffer. So,
20 clear, we need reform to the rules; and then proper
21 implementation on them.

22 The timber industry is fond of saying California
23 has the strictest rules in the world. The regulations are this
24 thick. That's fine, but as you all know, it's how you enforce
25 them that matters. And we don't think they're doing a good job.

26 As far as SPI, Mr. O'Dell said, well, they've
27 changed their management style. What they provided was window
28 dressing. They're still going about their business plan of

1 clearcutting over a million acres in California, which is
2 changing the nature of the Sierra Nevada western slope. And it
3 reminds me, too, when Andrea Tuttle, the Director of the Board,
4 told us two years ago, they're mostly harvesting runt trees, and
5 that's Mr. O'Dell's point about, well, genetically challenged
6 tracts.

7 They've bought a lot of property. They own a
8 million-and-a-half acres, the second largest private land owner
9 in United States. Drive on Highway 49, and you tell me if
10 you're seeing runt trees being removed from the Sierra Nevada.
11 There are huge trees being removed by Sierra Pacific as we
12 speak, or as soon as they can get in after the snow. That's what
13 they're doing; that's their business plan. Go to the overlook
14 at Calaveras Big Tree State Park and look south across the
15 Tuolumne River and look at a patchwork of clearcuts, which are
16 now not there, but other sites are becoming visible from the
17 Sacramento Valley on a clear day. You can see Sierra Pacific's
18 clearcuts.

19 We don't think that's necessary. People live
20 with selective harvesting up there for generations, and the
21 people have retired up there, have lived up there for over a
22 hundred years. We're happy with that, lived with it. SPI's
23 changing that. This Board can do something about it, and we'd
24 like to see them do something.

25 We know this is an industry seat, but if you look
26 back at Z'Berg-Nejedly, the law, the preamble talks about
27 striking a balance between the need to get board feet out of the
28 Sierra and other places and protecting public resources. That's

1 why we're opposing this appointment, because we don't think
2 they're doing a good job of protecting the public resources.

3 We still think you can get the board feet
4 necessary to let California grow and do a much better job
5 protecting water quality and species.

6 Thank you.

7 MS. THIELE: Hi. My name is Traci Thiele, and
8 I'm from the Humboldt Watershed Council. As of this month, I've
9 been a monthly monitor and advocate at the Board of Forestry for
10 the public. I believe I'm one of only two people who are unpaid
11 volunteers that do this work.

12 In these four years that I have been a public
13 advocate at the Board of Forestry, I have been through many,
14 many frustrating issues, an example being a rule package that we
15 brought to the Board that was going to improve the reporting of
16 salmon habitat and also the mapping, because we have a hard time
17 understanding THPs. They're so obscure that we wanted to
18 improve some of the information so the public could understand
19 this process and participate. It was a simple rule package.

20 But due to many obstructionist tactics by
21 industry representatives, especially Tharon O'Dell, it took us
22 two-and-a-half years to get this rule package through. It was a
23 great sacrifice on my part, being I had to pay my way to San
24 Diego, to San Bernardino, all over the state. They would forget
25 to schedule it when it was in Sacramento, where it was easy for
26 us, but they would schedule our hearings and working on our
27 package in the far corners of the state.

28 Just recently I was pretty horrified by the

1 industry landowner relief package, large landowner relief
2 package that was brought to the Board. The industry
3 representatives carried that package through the process in
4 two-and-a-half months. It was a pretty harsh thing to see after
5 the scrutiny our rule package went through.

6 When the decision came from OAL, I felt very
7 justified in the horror that I felt, seeing this rule package
8 get pushed through and the condition it was in. This was done.

9 And I believe that Tharon O'Dell, although he is
10 an educated man and knows the timber industry very well, is very
11 entrenched in the strategy of the lobbyists in the industry to
12 use every method to obstruct any improvements in the rules,
13 including using the plights of small landowners, and using
14 science in a way that I believe is like tobacco science, they
15 call it. They construct these science panels of industry --
16 industry related scientists that take and make scientific
17 reports that completely construe the reality of this.

18 So, even though I know, and I've been told by
19 other activists, environmental activists and public advocates
20 that this is an industry seat, I believe that we should have a
21 broader range of industry and timber representatives in these
22 seats. We need to have nonindustrial timber representatives,
23 and also fisheries representatives, industry representatives,
24 because they are affected by the policies being made before this
25 Board.

26 Thank you.

27 CHAIRMAN BURTON: Thank you.

28 MR. ALFORD: Good morning, Mr. Chair, Members of

1 the Committee. My name is Warren Alford. I represent a group
2 called Ebbetts Pass Forest Watch today, and our group is a
3 coalition of businesses, private landowners, landowners
4 associations, and conservationists in the Sierra Nevada.

5 I intended to just give a general opposition and
6 not say anything today, but I had to take exception with
7 Mr. O'Dell's contention that Sierra Pacific Industries, the
8 largest private landowner in the nation, is going out of its way
9 to work with local communities like ours.

10 CHAIRMAN BURTON: Who owns SPI?

11 MR. ALFORD: Red Emerson.

12 CHAIRMAN BURTON: That is the largest? He is, I
13 think, ten acres ahead of Ted Turner.

14 MR. ALFORD: Yeah, they go back and forth.

15 CHAIRMAN BURTON: They have a race to see who
16 owns more property.

17 MR. ALFORD: Right. Ted's got his buffalo burger
18 restaurant chain open now, so that may change.

19 Needless to say, I've had a lot of experience
20 dealing with this company, and they have clearly indicated that
21 they're going to clearcut a million acres of land in the Sierra
22 Nevada. That's happening on our watch. They haven't done
23 anything to address the community's concerns for aesthetics, for
24 water quality and the herbicides that they're spraying on our
25 hillsides, and ultimately that affects all of California's
26 resources because 80 percent of the state depends on our
27 forested areas for our water quality.

28 And just briefly, I'd like to thank Senator

1 Karnette for talking about the cumulative impacts. Mr. O'Dell
2 indicated that they do have rules that deal with the area that
3 they assess for dealing with cumulative impacts. And our
4 organization's actually suing the California Department of
5 Forestry right now over that very specific issue.

6 And what they use for an assessment area is about
7 7,000 acres. It's not an entire watershed. We know that water
8 runs downhill, and it crosses property lines. They're not
9 looking at the entire watershed. They're not even looking at
10 part of a watershed. They're looking at very small parts of
11 watersheds.

12 The U.S. Department of Forestry has understood
13 that they need to look at the entire range of the Sierra Nevada
14 to understand what those cumulative impacts are going to be from
15 the activities that happen in the range. And so, the Board's
16 failure to address that very simple issue is a real problem.

17 So, our organization is opposed to the
18 confirmation of Tharon O'Dell.

19 Thank you.

20 CHAIRMAN BURTON: Other opposition. Don't just
21 come up one at a time. We've got a lot of stuff we have to do.

22 MS. BOOTH: Melinda Booth with Defenders of
23 Wildlife.

24 We oppose the confirmation of Tharon O'Dell to
25 the Board. Thank you.

26 MR. LABBE: I'm Lane Labbe, and a Sierra Club
27 member, concerned citizen, Quincy, California, rural north
28 eastern part of the state.

1 I'm interested in better forest management. So,
2 I oppose Mr. O'Dell's nomination. Thank you.

3 MS. FREDIANI: My name is Jodi Frediani. I
4 represent Citizens for Responsible Forest Management in Santa
5 Cruz County.

6 A couple of comments. You, Senator Burton, asked
7 about the sudden oak death, and Mr. O'Dell's response was, well,
8 we need to go slow.

9 Unfortunately, that has been the attitude of the
10 Board of Forestry in the 20-plus years that I have been involved
11 as a forest and watershed advocate in Santa Cruz County. It's a
12 great concern.

13 Additionally, when the question came up, and he
14 talked about acknowledging that there were problems with the
15 salmonids north of San Francisco, he didn't seem to be aware of
16 the fact that the coho are endangered and almost nonexistent in
17 Santa Cruz County now, even though 20 years ago, there was a
18 healthy population. The steelhead are also listed as
19 threatened. And the majority of our streams are now listed as
20 impaired for sediment by the Regional Water Quality Control
21 Board. In fact, this year they're expanding their listing,
22 adding additional streams and tributaries which continue to
23 suffer.

24 When my son was a child, we used to go into the
25 stream next to me, and we could actually stand with the water
26 over our head. Today, it's filled in with sediment. There are
27 no pools.

28 Additionally, we in Santa Cruz, and I worked on

1 that for two years, had worked extensively with industry to
2 develop a rule packet to go to the Board of Forestry; it was a
3 negotiated settlement with the advocates and industry, and the
4 meat of that package was turned down by the Board of Forestry.
5 It included such things as a 50-foot minimal no-cut buffer zone
6 along streams. National Marine Fisheries Service is asking for
7 150 feet.

8 We wanted accountability. And we heard
9 Mr. Burton talk about if you're driving too fast, you get a
10 ticket from CDF. If you make mistakes and you don't follow the
11 forest practice rules, you get a Notice of Violation. There's
12 no fine; there's no accountability. We asked for those things
13 in our rule packet. We didn't get them. And the specific
14 comment that stands out in my mind is, Mr. O'Dell commented how
15 pretty the blossoms were on the scotch broom. That is an exotic
16 invasive that comes in after extensive timber harvesting and is
17 actually a serious fire hazard.

18 So, I agree with the other folks. I think that
19 even though he is an industry representative and in an industry
20 seat, which is appropriate, it's time for some new blood on the
21 Board of Forestry. We need some changes. We need to protect
22 our water supply, not only for the fish, but for the communities
23 that depend on the water.

24 Thank you.

25 MR. BAILEY: Mr. Chairman, Members of the
26 Committee, thank you for letting me speak today. I'm Gary
27 Bailey. I drove all the way from Sunnyvale just to tell you I'm
28 disgusted with the lack of protection our forests and watersheds

1 and species that our Board of Forestry has provided. That's why
2 I'm opposed to this nomination and some of the others.

3 Thank you.

4 MR. STROMSMOE: Kent Stromsmoe, Forestry
5 Monitoring Project, Bay Area Coalition for Headwaters, opposed
6 to the reconfirmation of Mr. O'Dell.

7 With regards to the sudden oak death issues, 15
8 months prior to the Board's finally declaring a zone of
9 infestation, I asked the Board to quarantine, to take vital
10 sanitary measures for what was clearly an epidemic. And the
11 response from Mr. O'Dell included an indication that we don't
12 know what it is, therefore we shouldn't do anything.

13 I think common sense dictates, and the
14 precautionary principle that when you don't know what's going
15 on, you attempt to limit the transport --

16 CHAIRMAN BURTON: What would you have done?

17 MR. STROMSMOE: Well, I would have declared a
18 zone of infestation and --

19 CHAIRMAN BURTON: How would it work?

20 MR. STROMSMOE: How would it have worked?

21 CHAIRMAN BURTON: Yes. In other words, you made
22 a suggestion.

23 MR. STROMSMOE: You would take those common sense
24 measures that would keep something that is obviously affecting
25 wood products, trees, from moving those materials from one
26 location to another. In other words, you would try and avoid
27 any kind of transport of unfinished wood products from an
28 infested area to noninfested areas.

1 CHAIRMAN BURTON: You've got infestation in
2 Quincy, so you wouldn't move trees or unfinished product from
3 Quincy to Arcada.

4 MR. STROMSMOE: Precisely. Just as we do with
5 zones of infestation for other organisms.

6 CHAIRMAN BURTON: Yeah, a simple, uncomplicated
7 act.

8 MR. STROMSMOE: You try and do what common sense
9 things you can.

10 CHAIRMAN BURTON: I got it.

11 MR. STROMSMOE: You don't wait 15 months.

12 CHAIRMAN BURTON: Yeah, 15 months. Yes, sir.
13 Thank you.

14 MR. COLLINS: Thanks a lot. Kevin Collins,
15 Santa Cruz County. I work for several organizations.

16 I'd like to clarify an issue that Betty Karnette
17 brought up, and that's the point of cumulative watershed impact.

18 For the information of the entire committee, it's
19 important to understand that there is no definable limit in the
20 forest practice rules to the acreage in a watershed that can be
21 logged in any particular period of time.

22 In August, the National Marine Fisheries Service
23 made a presentation about the effect on the Gualala watershed.
24 This is a river North of the Russian River. And all the forest
25 operations had been approved by the California Department of
26 Forestry, and I think something between 75 and 80 percent of the
27 acreage of that watershed had been logged within ten years.

28 So, when the discussion about cumulative impact

comes up, it is still wide open and unresolved problem with the forest practice rules which has not been dealt with effectively.

Thank you.

CHAIRMAN BURTON: Can Mr. O'Dell come back up and respond to some of these things, including what seemed to be rather simple to me, is the quarantine on the oaks. You made something seem very complicated and intricate that, at least first steps, would be kind of simple.

In other words, you can't cure the pox sometime, or measles, but I remember people used to be like quarantined. What's wrong with, like, if you find an area of infestation, that you don't move unfinished products out of it into other areas?

MR. O'DELL: Eventually that's what occurred after we got some sense of the extent of the infestation. That's precisely what did occur.

And the zone of infestation is not a static area.

CHAIRMAN BURTON: So what if it isn't static? If you find something wrong in 14th and Q Street, you stop it there and don't worry, well, there might be something wrong at 17th and S.

What the hell's the difference? You can't cure it all, and it may grow, but you stop where you know it is, and if you find there's another problem, you don't move that stuff out.

You know, when I was a kid, you used to drive into California, and you'd go through these things, and they'd ask you if you're bringing any fruits in, or any whatever. Do

1 they still do that.

2 MR. O'DELL: Sure, sure.

3 CHAIRMAN BURTON: But anyway, what's complicated
4 about that? In other words, it seems like, let's not do
5 anything because we can't do everything, doesn't make a hell of
6 a lot of sense to me.

7 MR. O'DELL: Well, what that really translates to
8 is financial impact on people trying to understand whether or
9 not they move products to and from, or between counties.

10 CHAIRMAN BURTON: Public safety. Big deal with
11 the Governor. He talked about it last night forever. Economic
12 growth.

13 I mean, the impact, you've got something here
14 that's got a disease in it that could spread to products all the
15 way up there, so we aren't going to let you move that until it's
16 either a finished product or until we know.

17 And if I was the person with the trees and the
18 lumber up here, where you're moving stuff, I'd be kind of
19 happy.

20 I mean, what you're saying defies logic.

21 MR. O'DELL: More than happy. They were adamant.
22 That's exactly what occurred. Oregon didn't want our products.
23 Nobody wants our products if they potentially would affect or
24 infect any of their own growing stock.

25 We have prohibitions on moving raw materials all
26 the way Korea now because of this sudden oak death, outside the
27 country. So, we have -- the zone of infestation really has
28 operated. It has been effective, and people have become much

1 more aware of what this pathogen might do. And we've actually
2 got some sense of just how virulent it is.

3 Before, when it was first discovered and it
4 didn't have a name, they weren't even sure what they were
5 dealing with. And they're still pretty uncertain, Senator
6 Burton, just exactly --

7 CHAIRMAN BURTON: Why does it need a God damned
8 name if you know that it causes problems? Make a name up. I
9 mean, you don't have to have a scientific name if something's
10 causing problems.

11 And, shall we say, and I don't know if that works
12 in trees, but if it's like contagious, you know, you're familiar
13 with the term, bovine brusolosis.

14 MR. O'DELL: Uh-huh.

15 CHAIRMAN BURTON: All right. So, until they
16 called it bovine brusolosis, it was contagious abortion in cows.
17 Same deal. And they used to pay the farmers to slaughter the
18 cows so it wouldn't infect the herd.

19 That's another little unknown fact.

20 But I mean, to wait until we figure out the name
21 doesn't make a lot of sense.

22 MR. O'DELL: Well, the name's not so important as
23 how it behaves as a pathogen. That's very important.

24 CHAIRMAN BURTON: Don't you kind of know it
25 causes trouble?

26 MR. O'DELL: We know, but we don't know the
27 extent of the trouble it causes.

28 CHAIRMAN BURTON: How about it causes trouble?

1 MR. O'DELL: It causes trouble.

2 CHAIRMAN BURTON: Fine. So, if you know it
3 causes trouble, at all cost don't we want to avoid trouble?

4 MR. O'DELL: To the extent we can.

5 CHAIRMAN BURTON: All right. And can you avoid
6 trouble if you know, let's say in Marin, or where ever the hell
7 it is, that there's some place where there is this thing that we
8 can't name that will cause trouble, so we don't want to be
9 moving it in areas where it can end up causing more trouble.

10 MR. O'DELL: And we did that.

11 CHAIRMAN BURTON: You do do that.

12 MR. O'DELL: Yes, we do.

13 CHAIRMAN BURTON: They seem to think you're not
14 doing it.

15 MR. O'DELL: That's not true. We do that.

16 CHAIRMAN BURTON: You're doing that.

17 MR. O'DELL: Absolutely. Have been doing it for
18 quite sometime.

19 CHAIRMAN BURTON: So, like, you quarantined?

20 MR. O'DELL: No, a zone of infestation. A
21 quarantine is different. That's done by Agriculture.

22 CHAIRMAN BURTON: What would you call it if you
23 said, don't ship stuff?

24 MR. O'DELL: A prohibition on shipping stuff.

25 [Laughter.]

26 SENATOR JOHNSON: A very highly technical term.

27 [Laughter.]

28 CHAIRMAN BURTON: Is there anybody here from the

1 Forestry Board? Could you explain why, when, for the want of a
2 better word -- you are here from the Board?

3 MR. BLUMBERG: From the Department?

4 CHAIRMAN BURTON: Could somebody explain to me
5 why it took so long to do, quote, to use the phrase, the
6 environmental thing, which was two-and-a-half years to do I
7 don't know what? And then, when something came along that I
8 guess was very helpful to the industry, it went through like
9 that. In fact, it went through at such a speed that maybe the
10 OAL found that it violated something.

11 MR. BLUMBERG: My name is Louis Blumberg, Deputy
12 Director for the Department of Forestry and Fire Protection.

13 The Department came to the Board of Forestry in
14 the spring of last year with a recommendation that the Board
15 declare a zone of infestation, and the Board did so in the
16 following month, I believe.

17 CHAIRMAN BURTON: What are you talking about? I
18 was asking a different question.

19 MR. BLUMBERG: The Board has the authority to
20 declare a zone of infestation --

21 CHAIRMAN BURTON: If this isn't in your area,
22 that's cool too, but one of the witnesses in opposition said
23 that they had a, quote, environmental proposal, whatever it
24 was.

25 MR. BLUMBERG: Oh, that package?

26 CHAIRMAN BURTON: That it took two-and-a-half
27 years, one.

28 Two, and then there was some deal --

1 SENATOR JOHNSON: And also a package of rules
2 proposed by the industry, was what her testimony was. She
3 contrasted, it took two-and-a-half years for adoption or partial
4 adoption of their proposals, and in two-and-a-half months,
5 industry proposals that she characterized as being more
6 comprehensive.

7 MR. BLUMBERG: The Board has a very complex rule
8 making process.

9 CHAIRMAN BURTON: But it wasn't complex when it
10 came to the industry. That was her point.

11 MR. BLUMBERG: I think Mr. O'Dell made the point
12 that there was unanimous support for that package. There was
13 less controversy over that package, and it was adopted quicker
14 because there was less -- there were fewer objections raised to
15 it.

16 CHAIRMAN BURTON: You just said it was unanimous.
17 Now there were fewer?

18 MR. BLUMBERG: The Board vote was unanimous.

19 SENATOR JOHNSON: Fewer objections coming from
20 outside.

21 CHAIRMAN BURTON: Then the other thing that she's
22 got, it would seem to me that if you're dealing with an issue
23 that, by and large, affects Northern California, why the hell
24 would you have the hearing in San Diego and not in Sacramento?

25 And I know you have hearings throughout the
26 state, but you know, we try, if we're going to have an interim
27 hearing on something that's a big issue somewhere in Orange
28 County, we aren't going to have the hearing up Eureka, you know,

1 so that maybe only the developers on this issue can fly up there
2 and the citizens can't.

3 Why doesn't the Board figure out where the
4 interests are, and then schedule the hearings on an issue
5 somewhere approximate where people can come?

6 MR. BLUMBERG: I really can't speak to that.

7 CHAIRMAN BURTON: Who can speak to that?

8 MR. BLUMBERG: I'm not with the Board of
9 Forestry. The Board does try to schedule one hearing in
10 Southern California a year, generally. When it schedules its
11 trips, it does not know all of the items that'll be on the
12 agenda for that issue.

13 Generally, all the issues it deals with are
14 predominantly in Central and Northern California. There's not
15 really commercial timber harvests in Southern California.

16 CHAIRMAN BURTON: So, it'd be an odd place to
17 have it in San Diego, unless you wanted to discourage
18 participation, and I know it's not your thing.

19 SENATOR JOHNSON: Move confirmation.

20 CHAIRMAN BURTON: I'll tell you what my position
21 is on this, I think, is that I'd be willing to move this to the
22 Floor, but I'm not sure whether I'm going to take it up or not.
23 I've got a lot more questions.

24 And as much as, I think, from the industry's
25 standpoint, which again is damning with faint praise, you're
26 better than some of the public members, the one, the entire
27 makeup of the Board is screwed up. There are a lot of vacancies
28 on the Board.

1 Senator Kuehl does have a bill to reorganize the
2 Board.

3 Do you have a Chairperson yet? I don't think so.
4 Do you?

5 MR. O'DELL: No. We've got a Vice Chair acting
6 as Chair.

7 CHAIRMAN BURTON: For how long?

8 MR. O'DELL: Until we get a confirmation --

9 CHAIRMAN BURTON: No, I mean how long has it
10 been?

11 MR. O'DELL: It's been a year or more.

12 CHAIRMAN BURTON: You haven't had a Chair for a
13 year.

14 The Board, that's kind of an important board no
15 matter how you look at it. I guess if you're industry, if they
16 do nothing it's kind of cool, but if you're worried about salmon
17 and other stuff, you may want them to do something.

18 How long have you had a quorum?

19 MR. O'DELL: We were unable to meet in the spring
20 of '99, but since I believe it was June or July of '99, we've
21 got a quorum.

22 CHAIRMAN BURTON: So, it was like three or four
23 months --

24 MR. O'DELL: Yeah, it was about three months
25 there, Senator Burton, where we did not have a quorum.

26 CHAIRMAN BURTON: So if you have a bare quorum,
27 you need everybody to vote in favor of something or nothing
28 happens.

1 MR. O'DELL: Well, to have any movement on rule
2 packages, you have to have a majority of five on a nine-person
3 board.

4 CHAIRMAN BURTON: Right, so if you have a bare
5 quorum, which is five, you need all votes.

6 MR. O'DELL: You'd need all the votes to do
7 something on rules, but there are other things you can do with
8 the majority of sitting members.

9 CHAIRMAN BURTON: What, like go to lunch?

10 MR. O'DELL: Well, you can always do that, yeah.

11 CHAIRMAN BURTON: Take hearings?

12 MR. O'DELL: But you can't do rule packages or
13 vote on rules.

14 CHAIRMAN BURTON: So all you can do is listen to
15 people talk?

16 MR. O'DELL: You can do that. You can listen to
17 people talking, have committee meetings. You can have --

18 CHAIRMAN BURTON: But you can't take action.

19 MR. O'DELL: No, we cannot take action on rule
20 packages.

21 CHAIRMAN BURTON: I'll move the bill to the
22 Floor, but it's a clear understanding that I don't know what's
23 going to be happening there. Johnson moved.

24 SECRETARY WEBB: Senator Karnette.

25 SENATOR KARNETTE: Pass.

26 SECRETARY WEBB: Senator Knight.

27 SENATOR KNIGHT: Aye.

28 SECRETARY WEBB: Knight Aye. Senator Romero.

1 SENATOR ROMERO: Aye.
2 SECRETARY WEBB: Romero Aye. Senator Johnson.
3 SENATOR JOHNSON: Aye.
4 SECRETARY WEBB: Johnson Aye. Senator Burton.
5 CHAIRMAN BURTON: Aye.
6 SECRETARY WEBB: Burton Aye. Four to zero.
7 MR. O'DELL: Thank you, Senator.
8 [Thereupon this portion of the
9 Senate Rules Committee hearing
10 was terminated at approximately.
11 11:30 A.M.]

12 --ooOoo--
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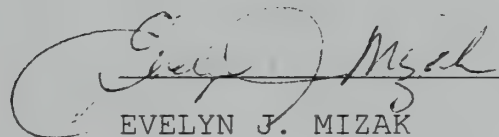
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EVELYN J. MIZAK
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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 16, 2002
1:36 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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9
10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, JANUARY 16, 2002

16 1:36 P.M.

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25 Reported by:

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27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

MONICA C. LOZANO, Member
Regents of the University of California

SENATOR RICHARD POLANCO

NORMAN J. PATTIZ, Member
Regents of the University of California

STEPHEN A. ARDITTI
University of California

ROBERT BALGENORTH
State Building Trades

SCOTT WETCH
State Building Trades
State Pipe Trades Council
California State Association of Electrical Workers
Western States Council of Sheet Metal Workers

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Governor's appointees
appearing, Board of Regents, Monica Lozano.

Senator Polanco.

SENATOR POLANCO: Good afternoon, Mr. Chairman
and Members.

I'm here today to present, introduce, and ask
for the support of this Committee for the nomination of Monica
Lozano to the Board of Trustees. In 1991, Members, since 1991
she has served as a trustee at the University of Southern
California.

In 1999 this body, the Senate, in its entirety,
confirmed her appointment to the State Board of Education. She
has subsequently stepped down from that position, has been
nominated to the Board of Regents.

I've known her to be a very, very solid, civic
minded person, a great leader, a great Californian, great
business woman, and I would ask that this body move forward the
nomination so that we on the Senate Floor can bring the process
to completion, hopefully successfully, in her confirmation.

So, I present her to you, Mr. Chairman, and to
the Members of the Rules Committee.

CHAIRMAN BURTON: Thank you, Senator Polanco.

MS. LOZANO: Thank you, Senator Polanco, for that
very kind introduction.

It really is a privilege and an honor to be
before you today as a nominee to the UC Board of Regents.

1 I am particularly concerned where what we know as
2 Tidal Wave II, which of course is the expectation that there
3 will be close to 600,000 more students that will be entering the
4 higher ed. systems over the course of the next ten years. I
5 believe that our response as a state has to build upon our
6 commitment that was enshrined in the Master Plan that really
7 deals with the issues of quality education while providing
8 access and affordability to all of our resident students in the
9 state of California.

10 I expect that as a Regent, my tenure will be
11 guided by the core commitment to the philosophy of quality,
12 accountability, and affordability, as well as access to our
13 diverse student population in California. I believe that we
14 should focus on improving the student experience for both
15 undergraduates as well as graduates, the retention of
16 distinguished faculty at all of our campuses, the adequacy and
17 the condition of our physical plant, as well as the promotion of
18 greater collaboration among all segments as well as through
19 K-12.

20 I'm deeply committed to maintaining the UC's
21 position as the preeminent research institution in the United
22 States. I think that my experience, having served on the State
23 Board of Education, gives me deep knowledge of the issues that
24 we deal with with our students as they move through the K-12
25 system, and I look forward to serving as a Regent to improve and
26 enhance our ability to maintain our competitiveness both in
27 terms of the economy of California as well as our ability to
28 ensure that the doors of the university are open to our diverse

1 student populations.

2 So with that, again, I thank you for the
3 privilege and honor of being here, and I'd be happy to answer
4 any questions you may have.

5 CHAIRMAN BURTON: Dealing with financial aid
6 issues, and I don't know if you have all this information yet,
7 they have an aid program of about \$100 million at the
8 University. How do they distribute that aid or determine who
9 gets it? Do you know? If you don't, it's all right.

10 MS. LOZANO: I don't know all of the details of
11 the financial aid program.

12 CHAIRMAN BURTON: Are you learning?

13 MS. LOZANO: I'm definitely learning. I have
14 served on this Board since November of last year. Clearly, the
15 issues of financial aid are important to all of us.

16 Let me just say that I was certainly concerned
17 with the Cal Grant program, which I know that you authored and
18 spearheaded, opened up that program to thousands of eligible
19 students, and we want to make sure that when those sorts of
20 programs are made available to our student body, that that money
21 gets out and into the hands of the students.

22 My understanding is that UC, we actually have
23 ensured all of the Cal Grant monies for those students who are
24 eligible actually got to those students.

25 CHAIRMAN BURTON: The UC staff can tell you, but
26 the University also has its own program of about 100 million.

27 You can tell us after, Steve. He's nodding; he
28 knows it all.

1 Senator Johnson.

2 SENATOR JOHNSON: No questions.

3 CHAIRMAN BURTON: Senator Romero.

4 SENATOR ROMERO: Thank you.

5 Of course I'm delighted with your appointment to
6 the Board, look forward to confirmation.

7 I just have a couple of questions that I'd like
8 to ask. Number one, if you can address more specifically the
9 plans for the UC to implement the dual admissions policy. I
10 think this is an exciting way to go.

11 Clearly, I believe, transfer has been one of the
12 biggest failures in the Master Plan. The numbers are not there,
13 and oftentimes students do not transfer from areas, many areas
14 of my district like East Los Angeles. Few community colleges
15 actually accomplish that transfer function.

16 Can you talk to the Members of the Committee a
17 little bit more about what your plans would be to go ahead and
18 to move forward the dual admissions program, and what you would
19 see to move that forward? Also, how to address the bigger issue
20 of transfer overall.

21 MS. LOZANO: Let me just say that I absolutely
22 agree with you that we need to focus more and improve the
23 transfer rate from students out of community colleges into the
24 four-year institutions of their choice.

25 Some of the community colleges do better than
26 others, and we've been given data to that effect. I think one
27 of the things we do is, we try to understand what are the
28 campuses that are doing a good job of ensuring that students

1 complete the course work required, that the course sequencing is
2 appropriate so that they can then move quickly into the
3 four-year institutions.

4 The dual admissions program, I think, is a piece
5 of a broader admissions policy and aim of the UC to open up the
6 UC to those students that are eligible, and to ensure what I
7 earlier spoke about in terms of diversity. My understanding is
8 that it has been authorized. The Regents are fully supportive
9 of dual admissions, but it requires a funding mechanism that is
10 not yet in place.

11 And I would hope that while the legislation
12 states that it has to be new money, that even in the time of
13 budget crisis like we find ourselves today, we might find
14 working with the Legislature the ability to ensure that those
15 monies are authorized so that we can adequately implement dual
16 admissions.

17 I understand that that money is to allow for a
18 ratio of counselors to students as required, and if we can work
19 with you to make sure that those counselors can be appropriately
20 hired, then that's what we would need to do.

21 SENATOR ROMERO: And also there was a recent
22 report that was written that talked a little bit about the
23 transfer function, and how, even though it is enshrined in the
24 Master Plan, it is considered to be an appropriate mission of
25 the University that oftentimes gets treated as an add-on. But
26 if we get the money, UC has a \$16 billion budget, this program
27 would be about \$2.5 million. It certainly seems that within \$16
28 billion, that the priority of transfer, I hope, and hopefully

1 with you as a Regent on this Board advocating for the UC to
2 dedicate resources out of 16 billion, I certainly hope we can
3 see that.

4 Let me just ask a second question. There have
5 been discussions about the role of teaching at the University,
6 and what is the appropriate time, amount of teaching, and how is
7 it evaluated, particularly in the retention and promotion
8 process.

9 I've been a faculty member for many years. There
10 have been lawsuits filed against the University of California in
11 terms of how teaching is evaluated. Many professors will say
12 it's simply not high on the priority list when it comes to
13 tenure, which is unfortunate.

14 I have a daughter, a first-year student at the
15 University of California. She says, "Mom, you don't see the
16 professor. You see the teaching assistant."

17 How would you address the emphasis, how we can
18 reprioritize and, I believe, give proper respect in the
19 retention and promotion process to faculty engaged in what I
20 believe? Yes, UC is a research institution, but we teach, and
21 we should teach at the University of California.

22 Can you give me some thoughts as to how you would
23 approach the value of teaching at the University of California?

24 MS. LOZANO: I think you stated it most
25 eloquently, Senator. The prestige of UC is really, I think, in
26 many ways due to the high quality of its faculty. And the
27 ability of undergraduates in particular to be given the
28 opportunity to interact with the prestigious faculty members

1 that we have on staff is one of the things that I think makes us
2 particularly -- distinguishes us in the higher ed. world.

3 So, I would hope that we can encourage, of
4 course, faculty to put more emphasis on teaching. And one of
5 the ways that you do that, of course, is through the policies
6 that are implemented on each campus. So, working with the
7 Chancellors and working with the faculty associations.

8 And I understand from having talked with a number
9 of faculty members, they are very much committed to their role
10 as educators, as much as many of them are committed to their
11 role as researchers.

12 So, I think it's a question of really putting the
13 focus where it belongs, which is really their dual mission of
14 both research and instruction.

15 SENATOR ROMERO: One last question. I told you
16 that last time but one more.

17 What is your position on the project labor
18 agreements with the UC Merced campus?

19 MS. LOZANO: My understanding is that the project
20 labor agreements at UC Merced are still being negotiated. There
21 is clearly an interest in making sure that the UC campus and the
22 construction of the campus provides opportunity for the local
23 communities. At the same time, we want to make sure that it
24 comes in on budget and on time, and that the work that is done
25 in that particular construction activity reflects our prevailing
26 wage -- commitments toward prevailing wage.

27 So, I think at this point, while we don't have a
28 final solution before us, and the compromise is still being

1 hammered out, I'm sure that we're going to get to something that
2 will be in the best interest of the Merced community as well as
3 the community of the UC.

4 SENATOR ROMERO: Thank you.

5 CHAIRMAN BURTON: Senator Knight. Senator
6 Karnette.

7 SENATOR KARNETTE: What is your feeling about the
8 Golden State Exam? I know that there's some discussion about
9 that being used for college placement, and I know a lot of
10 students take them, and they don't they feel like, so what, you
11 know?

12 Are you familiar with what I'm talking about?

13 MS. LOZANO: I am familiar with what you're
14 talking about.

15 I think right now, at least having served on the
16 State Board of Education for a number of years, one of the
17 things that we're trying to do is to align all of the exams that
18 high school students have to take, and to make sure that there
19 isn't duplication. And that, for example, things like our High
20 School Exit Exam, and the Golden State Exam, as well as the SAT,
21 and other entrance exams, are not duplicative, do not take up
22 the students' time in the way that they currently do, as well as
23 the teachers' time.

24 So, whether or not it's the Golden State Exam, or
25 a different sort of exam, I think what we're trying to do is to
26 align the system and make sure that we have assessment tools
27 that give us what we need to make sure that that student should
28 be appropriately placed in whichever one of the institutions

1 they're interested in attending.

2 SENATOR KARNETTE: I know there are just so many
3 exams, and the students' attitude becomes ugh.

4 CHAIRMAN BURTON: Witnesses in support?
5 Witnesses in opposition?

6 Do you have any family.

7 MS. LOZANO: I have no family here.

8 CHAIRMAN BURTON: There was a question that was
9 raised outside.

10 You were a USC Trustee?

11 [Laughter.]

12 MS. LOZANO: I am a USC Trustee, yes.

13 CHAIRMAN BURTON: Now you're a UC Regent?

14 MS. LOZANO: Yes, sir.

15 CHAIRMAN BURTON: And when the games are played,
16 are you going to be like the President, sit on one side, cross
17 over at halftime and sit on the other side.

18 [Laughter.]

19 MS. LOZANO: This is the hardest question. I
20 hadn't anticipated it.

21 CHAIRMAN BURTON: Give it some thought. You can
22 send us a written communication.

23 Call the roll.

24 SECRETARY WEBB: Senator Karnette.

25 SENATOR KARNETTE: Aye.

26 SECRETARY WEBB: Karnette Aye. Senator Knight.

27 SENATOR KNIGHT: Aye.

28 SECRETARY WEBB: Knight Aye. Senator Romero.

1 SENATOR ROMERO: Aye.

2 SECRETARY WEBB: Romero Aye. Senator Johnson.

3 SENATOR JOHNSON: Aye.

4 SECRETARY WEBB: Johnson Aye. Senator Burton.

5 CHAIRMAN BURTON: Aye.

6 SECRETARY WEBB: Burton Aye. Five to zero.

7 CHAIRMAN BURTON: Congratulations.

8 MS. LOZANO: Thank you very much.

9 CHAIRMAN BURTON: Norman Pattiz.

10 MR. PATTIZ: Thank you, Senator. I am Norman
11 Pattiz, and it's a great pleasure for me to be here. It's an
12 honor to have been appointed by the Governor. It's an honor to
13 be sitting here before you today.

14 Just to tell you a little bit about myself, I'm a
15 native of California, born and reared in this state. I'll be
16 having my 59th birthday --

17 CHAIRMAN BURTON: Is that in the Riordan state,
18 or born and reared in the state?

19 [Laughter.]

20 MR. PATTIZ: I was told at an early age in the
21 California educational system that raised was improper, but
22 reared was correct.

23 But anyway, at any rate, as I said, I am
24 delighted to be here because as a native Californian who was
25 educated in California, and who started his business in
26 California, and is very concerned about California and education
27 specifically, it's just a great honor for me to be here,
28 especially in the position that I'm in right now.

1 My interest in education goes from K through 12
2 right up through higher education. As an example of those
3 things, about 15 years ago I was approached by the assistant
4 principal of Hamilton High School in the L.A. Unified School
5 District, which happened to be my alma mater. And it's an inner
6 city school with all of the problems of an inner city school.
7 And this very aggressive young assistant principal asked me if I
8 would play a role in creating a magnet school for music and the
9 performing arts at Hamilton High School.

10 I was attracted to that project because A, a
11 magnet school by law must mirror the diversity of the community,
12 which I think is very important. And B, I thought it was an
13 opportunity to create an island of excellence within an inner
14 city school system that could be a model of how the private
15 sector and the public sector could work together to benefit
16 both. I'm proud to say that after 15 years of involvement at
17 Hamilton High School, the National Academy of Recording Arts and
18 Sciences has now selected Hamilton as the highest -- as the
19 number one public music academy in the western United States, I
20 think a very good example of how public sector and private
21 sector can work together.

22 Insofar as my interest in higher education, I've
23 been a member for the last 10 years and past president of the
24 Broadcast Education Association, which is an organization of
25 over a thousand colleges and universities with programs in mass
26 communications. I first became involved in that quite selfishly
27 as an opportunity to get involved with an academic organization
28 that embraced professionals because I thought that academe was

1 an under-utilized resource of those of us in the communications
2 business, and it would be an excellent way to tap into those
3 resources.

4 In the time that I've been involved with the
5 Broadcast Education Association, and spent a good deal of time
6 interacting with administrations and faculties, and lecturing in
7 front of students and so forth, I think it's given me a good
8 understanding of the needs of higher education and so forth.

9 The University of California is clearly the
10 premiere university system in the United States. And I would be
11 committed to making sure that that preeminence remains, while
12 assuring that we do everything possible to make sure that that
13 experience is available to all qualified candidates for
14 admission.

15 With that, I want to thank you again, and I'm
16 happy to answer any questions that you might have.

17 CHAIRMAN BURTON: Do you have any familiarity
18 with UC's scholarship and grant program?

19 MR. PATTIZ: I do. And I would like to say again
20 that your leadership in that area is something that I'm well
21 aware of.

22 And I think that the scholarship grants, you
23 know, are critical in making sure that students who don't have
24 the financial resources to be able to take part in this
25 experience do have those resources.

26 CHAIRMAN BURTON: But do you know UC's own
27 in-house program?

28 MR. PATTIZ: Yes.

1 CHAIRMAN BURTON: Do you know how they distribute
2 that?

3 MR. PATTIZ: I've been familiarized with that
4 within the last day or so.

5 CHAIRMAN BURTON: As long as we're killing time
6 here, Steve, if you don't mind.

7 MR. ARDITTI: Steve Arditti with the University
8 of California.

9 The bulk of these funds are distributed on the
10 basis of need. There are some merit-based funds that are
11 primarily private gifts that are distributed on the basis of
12 merit.

13 But what we try to do is put together the best
14 financial aid package we can for each student, utilizing
15 resources that we have, Cal Grant funds, federal and others,
16 such that we do the best we can for each student, including
17 maximizing, incidentally, Mr. Chairman, the Cal Grant funds.

18 CHAIRMAN BURTON: Is yours a grant program or a
19 loan program?

20 MR. ARDITTI: We have both. In other words, if
21 you're a very low income student, you'll get all grants. Then,
22 as you kind of go up the income scale, the balance will begin to
23 include both grants, and loans, and work study, and so forth.
24 And if you get up to a pretty high income, higher income level,
25 then it may be largely loans.

26 CHAIRMAN BURTON: And the financial aid money
27 basically comes from individual gifts to the University?

28 MR. ARDITTI: A variety of sources. A very large

1 share of student fee income is redirected to financial aid. We
2 have private gift money that is a part of financial aid. We
3 have federal funds that are part of financial aid. We have
4 state funds in the form of Cal Grants that are part of that
5 package.

6 CHAIRMAN BURTON: I was talking more of the
7 University's --

8 MR. ARDITTI: That's primarily then student fee
9 generated and private.

10 SENATOR JOHNSON: But typically, a kid coming in,
11 he'd get a package, or she'd get a package?

12 MR. ARDITTI: Yes.

13 SENATOR JOHNSON: From a whole variety of
14 sources?

15 MR. ARDITTI: Yes, but our financial aid offices
16 will do a need analysis on each entering student who claims
17 need, and then try to work with that student to try to package
18 together federal, University, private, whatever it is, to try to
19 maximize the total amount.

20 SENATOR JOHNSON: I understand, but then when
21 we're looking at the number of kids who are receiving this
22 assistance, we're counting the kids two and three times maybe?

23 MR. ARDITTI: No, I don't think so, at least in
24 terms of the reporting that we do.

25 SENATOR JOHNSON: Right. We routinely are told
26 we're serving X number of students in this program. Another
27 number of students in this program.

28 It seems to me what you're telling me is that a

1 lot of kids wind up being on two, or three, or more of those
2 lists.

3 MR. ARDITTI: Yes, but they don't get any more
4 than they're entitled to.

5 SENATOR JOHNSON: I'm not saying that they are.

6 CHAIRMAN BURTON: In other words, it allows the
7 numbers to be puffed. I'm getting the UC money; I'm getting,
8 you know, some Cal Grant money, and I'm getting who knows what,
9 Academic Grant and Aid, if they still have them.

10 So basically, you'd say, well, we've got 16
11 people getting this, 22 people getting that, and seven getting
12 that. And really that totals up to I don't know how many
13 people, but it really could total up to substantially less.

14 MR. ARDITTI: In the documents that we produce,
15 and I'll be happy to share that with you, we'll tell you how
16 many students of ours are getting aid all together, and then
17 we'll break down the sources of it. So, we will not tell you --
18 if there are three sources --

19 CHAIRMAN BURTON: You will not double-count us.

20 MR. ARDITTI: Correct.

21 SENATOR JOHNSON: Thank you.

22 MR. ARDITTI: Do I get to be on the Regents now?

23 [Laughter.]

24 MR. PATTIZ: No, but I wouldn't mind you sticking
25 around.

26 [Laughter.]

27 CHAIRMAN BURTON: Senator Romero.

28 SENATOR ROMERO: Again, thank you. If you could

1 just comment on the dual admission program policy, and when you
2 anticipate that it will be implemented.

3 MR. PATTIZ: My understanding of the dual
4 admission policy, which, incidentally, I think is a good idea,
5 is that the problem with it right now is that we don't have the
6 funding, and that the funding is a matter that needs to come up
7 in front of the Legislature. And I think the timing will be
8 dependent upon when that's forthcoming.

9 CHAIRMAN BURTON: Senator Knight. Senator
10 Karnette.

11 SENATOR KARNETTE: I have one question about your
12 feeling about distance learning. With this influx of students
13 and technology, it's going to be necessary to reach everyone in
14 the rural areas, in the very impacted areas.

15 What is your opinion about how that can be used
16 by the University?

17 MR. PATTIZ: Well, certainly in this day of the
18 Internet and instantaneous communication, it seems that the --
19 it would seem ridiculous not to utilize those technologies to
20 create more opportunities for students through distance
21 learning, to be able to take part in the academic programs at
22 the University.

23 They do exist. I know that the University is
24 using them now, but the opportunity to expand those, I think, is
25 a way that you can meet the obligations going forward that are
26 certainly going to be there with increased enrollment and find
27 some new and cutting-edge ways to accommodate that new
28 enrollment because bricks and mortar, you know, buildings and

1 university campuses are a very expensive proposition.

2 SENATOR KARNETTE: Thank you.

3 CHAIRMAN BURTON: Do you have family here?

4 MR. PATTIZ: Well, I have my assistant, Donna
5 Bejarsky, who's like a daughter to me. No, I don't.

6 CHAIRMAN BURTON: Witnesses in support.

7 MR. BALGENORTH: States Building Trades of
8 California stands in support of Norm.

9 I'm Bob Balgenorth, State Building Trades.

10 MR. WETCH: Scott Wetch on behalf of the State
11 Pipe Trades Council, the California State Association of
12 Electrical Workers, and the Western States Council of Sheet and
13 Metal Workers in support of both appointees.

14 Thank you.

15 CHAIRMAN BURTON: I think you will find that it
16 is sheet metal, not sheet and metal.

17 And I think the one thing you could do,
18 Mr. Carter, when you bring younger people on board, is to make
19 them acquainted with the client.

20 Any witnesses in opposition? Hearing none, move
21 in nomination.

22 Call the roll.

23 SECRETARY WEBB: Senator Karnette.

24 SENATOR KARNETTE: Aye.

25 SECRETARY WEBB: Karnette Aye. Senator Knight.

26 SENATOR KNIGHT: Aye.

27 SECRETARY WEBB: Knight Aye. Senator Romero.

28 SENATOR ROMERO: Aye.

1 SECRETARY WEBB: Romero Aye. Senator Johnson.

2 SENATOR JOHNSON: Aye.

3 SECRETARY WEBB: Johnson Aye. Senator Burton.

4 CHAIRMAN BURTON: Aye.

5 SECRETARY WEBB: Burton Aye. Five to zero.

6 CHAIRMAN BURTON: Congratulations.

7 [Thereupon this portion of the
8 Senate Rules Committee hearing
9 was terminated at approximately.
10 2:10 P.M.]

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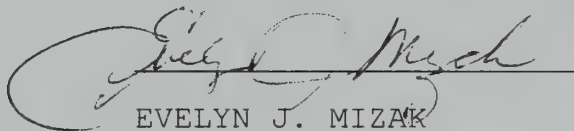
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That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

17th day of January, 2002.


EVELYN J. MIZAK
Shorthand Reporter

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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 23, 2002
1:35 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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8
9
10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, JANUARY 23, 2002

16 1:35 P.M.

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25 Reported by:

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27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

CAROL A. DALY, Member
Board of Prison Terms

ROY MABRY, President
California Association of Black Correctional Workers

LOU BLANAS, Sheriff
Sacramento County Sheriff's Department

JERRY MOORE, President
Sacramento County Deputy Sheriff's Association
Vice President, Northern Alliance of Law Enforcement

WILLIAM HEMBY
California Organization of Police and Sheriffs

BILL SCHMIDT, Inmate Attorney
Diamond & Schmidt

1 JONES M. MOORE, Member
2 Board of Prison Terms

3 SENATOR MIKE MACHADO

4 BOOKER T. WELCH, Member
5 Board of Prison Terms

6 DON NOVEY, State President
7 California Correctional Peace Officers Association

8 EARL SMITH, Chaplain
9 San Quentin State Prison

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Governor's appointees to appear today, Carol Daly.

MS. DALY: Good afternoon, Members of the Senate Rules Committee.

I was appointed to the position of Commissioner on the Board of Prison Terms on March 21st of 2001. On October 21st of 2001, I took over as Chairperson of the Board.

The Board was probably at a crisis level in just about every area of operation, which most of you are very much aware of, and we are approaching solutions across the board to solving these problems.

I had to make a quick assessment of the problems, and immediately selected a new Interim Executive Officer and made other personnel moves to establish my executive team. I appointed Jones Moore as the Vice Chairperson, and I immediately asked the State Personnel Board to abolish the newly established deputy commissioner list and work with us on a new exam.

I held an all-day facilitated meeting with our supervisors and managers to begin the assessment of our internal reorganization, and the Board of Corrections is also involved in an assessment of the Board as viewed by our stakeholders. We have met several times, and we are progressing towards identifying our steering committee and determining the timeline for completing our study.

2

1 I set up meetings with as many of our
2 stakeholders as possible to learn of their problems in
3 working with our Board. Regular meetings have been held
4 with CDC on issues of mutual concern, and we have a couple
5 of task forces going to look at how we can do better --
6 business a little bit better.

7 I have monthly meetings scheduled with Ed
8 Alameda, who is the Director of CDC, and also regular
9 meetings set up with both of the unions that represent the
10 majority of our employees.

11 In addition, I've had regular contact with
12 members of Senator Burton's staff, have listened to their
13 issues, and I have worked with them accordingly. We have
14 invited staff members to be a part of our task force on
15 Prop. 36 and a newly formed task force on the revocation
16 process.

17 On December 30th, the new Executive Officer was
18 selected and moved into position, and we are waiting for
19 the Governor's final approval on this.

20 These last three months have been extremely busy
21 that I've been Chairperson. We have accomplished much of
22 what needs to be done to set the groundwork for an
23 organization that works in true partnership with other
24 agencies and with the community.

25 It will be a couple of months before the hiring
26 and training of deputy commissioners can take place. It
27 will be another six months before the internal operation
28 can be reorganized to achieve maximum utilization of our

1 managers and to establish the timeline for the Board of
2 Correction's Steering Committee study to be completed. We
3 are looking at all internal procedures and will invite
4 stakeholders to recommend solutions and to work with us.

5 I am extremely honored to be placed in a position
6 of leadership with the Board of Prison Terms, and mostly to
7 be working with the talent and professionalism that has
8 been exhibited by our employees. Our goal is to be the
9 best professional team in state government, and I believe
10 that we're on a fast track to getting there.

11 Thank you.

12 I had the 22 questions that you had submitted
13 prior to coming to this confirmation hearing. I had
14 delivered those, and hopefully, I'm ready to answer the
15 questions that you might have.

16 CHAIRMAN BURTON: What's the timeline and plan
17 for eliminating the backlog? Do you have a specific one?

18 MS. DALY: I do. The timeline right now, going
19 into June 1st, will be 41 cases backlogged.

20 I just talked to our scheduling people. We are
21 about 885, and they're more comfortable with the number of
22 1,000 backlogged at this time, so, going into June.

23 As part of the solution to recovering in the
24 backlog as soon as things calm down, April is the earliest
25 that I can schedule. I'll also be out doing hearings,
26 taking 18 hearings a week, working three days, to help
27 catch up on this backlog. It's our number one priority,
28 Senator.

1 CHAIRMAN BURTON: The law requires the Board to
2 have Friday hearings, requires. And we've had these
3 discussions before, but I need them on the record. And the
4 Board chose to ignore the law.

5 Wouldn't it have been better if they said, "Look,
6 it really doesn't work. We would like to see a change in the
7 law."

8 You know, the Board deals with people who break
9 the law, and the Board's breaking the law.

10 MS. DALY: You're right. There hasn't been a
11 lot of discussion.

12 In looking at Senate Bill 778, and I probably
13 should have had discussions early on with you when I took
14 over as Chairperson, and to break down exactly what it is
15 that the Commissioners are doing on the five day, we're
16 working five days a week. We're conducting hearings --

17 CHAIRMAN BURTON: The only thing is, the law is
18 clear. It's not working. It might even be working seven
19 days, but they were supposed to be holding five days.

20 MS. DALY: I think the law said to hold hearings
21 each work day.

22 CHAIRMAN BURTON: Yeah, so if they're working
23 five days --

24 MS. DALY: Right, and we are working five days a
25 week, but we're doing hearings four days a week.

26 Senator, when we did the figures of doing
27 hearings five days a week, it isn't that we can just go down and
28 sit down at a table and conduct a hearing. There's a lot of

1 preparation work that is required, there is a lot of material
2 that needs to be read.

3 CHAIRMAN BURTON: I understand that. But then
4 what you do is, you come to the Legislature and say, these are
5 the problems with that; we'd clearly like you to change the law.
6 And in all probability, we would.

7 As I recall the bill, it wasn't like a slam,
8 bang, bing. You probably weren't even there then, but the bill
9 went through a normal process.

10 The point is, you've got a problem with the law,
11 come to us to change it. You shouldn't ignore it. That's all.

12 I understand your point. I think you could well
13 be able to make the point to the Legislature and would probably
14 be happy to modify the bill. What we were interested in was
15 curing the backlog, not to have, you know, five days, six days,
16 seven days, three days.

17 So, I would think that maybe you later could talk
18 to Anthony in the office, and maybe we'll modify it. It doesn't
19 set a good example for the prisoners you're interviewing when
20 you're breaking the law yourselves.

21 Why are the votes of individual commissioners
22 during any en banc reviews not made public?

23 MS. DALY: When I came on to the Board, I was
24 instructed that the en banc sessions were confidential.

25 CHAIRMAN BURTON: They aren't. Who instructed
26 you?

27 MS. DALY: Our legal division instructed us.

28 CHAIRMAN BURTON: Is your legal division here?

1 MS. DALY: We do have a representative here, and
2 that was based on the Bagley-Keene Act and the Government
3 Code that outlines the Bagley-Keene as far as the en banc
4 sessions and the confidentiality of the votes.

5 CHAIRMAN BURTON: There's nothing that requires
6 them to be kept secret.

7 MS. DALY: Senator, I know that this is an issue.
8 And in the three months that I have been in there, whatever
9 has come in issue, we want to work --

10 CHAIRMAN BURTON: I know. I'm told you're the
11 best thing that's happened to the Board of Prison Terms in quite
12 a while, which could be damning you with faint praise, but I
13 mean, the people on my staff and the people I talked to think
14 that you're doing as excellent a job as possible, but basically
15 the legal stuff's right. We don't want to pass a bill every
16 time.

17 There is nothing that requires those things to be
18 kept separate. And if your lawyer wants to come and talk to us
19 about it in budget hearings, we'll be happy to do that.

20 In other words, what is your feeling on the en
21 banc hearings being open to the public except for the
22 confidential material that remains confidential, just as it is
23 in regular panels?

24 MS. DALY: Senator, it's my intention to work
25 within the realm of the law. And if the interpretation -- I've
26 asked for an interpretation from our legal, from agency. As
27 soon as we have what is a valid interpretation, and that's the
28 way the law is, I will work within the realm of the law.

1 CHAIRMAN BURTON: I think the issue is, there's
2 nothing that requires them to be closed. It may be questionable
3 to be open.

4 So, the question is, forget what the law requires
5 you to do it. My position is, the law doesn't prohibit them to
6 be open. What would your position be on that?

7 MS. DALY: Here again, I would consult with my
8 legal counsel to get my direction.

9 CHAIRMAN BURTON: You know, the legal counsel,
10 unless they came on board six months ago, are probably part of
11 the problem.

12 MR. DALY: Senator, I'll work with that.

13 CHAIRMAN BURTON: Okay.

14 MS. DALY: Because I'll go outside the agency to
15 get our interpretation.

16 CHAIRMAN BURTON: That agency, for the longest
17 time, has not really been the shining light. And I personally
18 just feel that you are an excellent choice to do it, but just
19 like the Executive Director had to go, some of the legal people
20 there are the ones that have gotten the Board in trouble on some
21 of the other stuff. So, when they give you advice, I wouldn't
22 necessarily, you know, count on it.

23 Why are inmates' attorneys not permitted by the
24 Board to represent the inmate at an en banc hearing? That's the
25 one that decides kind of up or down, because they happen after a
26 split decision.

27 MS. DALY: There are no attorneys at the en banc
28 hearings.

1 CHAIRMAN BURTON: I know that. Why?

2 MS. DALY: Well, I think that the flavor of our
3 en banc hearings probably changed with Senate Bill 778, where we
4 had -- we brought in tie votes to en banc that we had not ever
5 done before.

6 So, I think that it's a very valid question, and
7 one that we have to take a look at as to our process.

8 CHAIRMAN BURTON: We do not want to load up the
9 budget with a lot of "thou shalts."

10 MS. DALY: Right.

11 CHAIRMAN BURTON: I think that's, quote, "the
12 life or death hearing," so there ought to be something there.

13 We went through this, and if you answered some
14 of these questions in your written thing, we can pass.

15 But for yourself, how many hours of the battered
16 woman's syndrome training have you received, if you can recall?

17 MS. DALY: I've received the BWS training a
18 couple of different times. Plus, I would say a minimum of four
19 to eight hours, but I have a lot of BWS training from my past.

20 CHAIRMAN BURTON: What's the minimum training for
21 a Board Member; do you know? Four hours? Eight hours?

22 MS. DALY: I don't know if it's mandated. I'm
23 sorry, I don't know that answer.

24 CHAIRMAN BURTON: That's okay.

25 But you yourself had eight hours?

26 MS. DALY: I've had --

27 CHAIRMAN BURTON: Not counting what you had
28 before you came to the Board.

1 MS. DALY: Right.

2 CHAIRMAN BURTON: So, eight hours. In other
3 words, if you walked in off the street, you would have eight
4 hours?

5 MS. DALY: Yes.

6 CHAIRMAN BURTON: And your past experience you've
7 had it, so it's basically an eight-hour thing.

8 We had these questions before. Going right back,
9 almost looking at legislation, the Youthful Offender Parole
10 Board allows the wards to address their board after the victims,
11 families or victim testifies.

12 Why at the Board of Prison Terms is the prisoner
13 not given the opportunity to either clarify, rebut, or mea culpa
14 something after?

15 MS. DALY: Well, it's been the long practice at
16 the Board to allow the victim's next of kin to make the impact
17 statement, and that's what they're speaking to, as what the
18 impacts of the crime was on them.

19 They're cautioned, if they bring any new
20 additional information in, we're going about what was allowed in
21 court, and we're not going to consider anything else. The only
22 thing that we're going to be listening to is how the crime
23 impacted them. Should not be an adversarial --

24 CHAIRMAN BURTON: That wasn't the question. The
25 question is that in the CYA, the wards are offered the chance at
26 the closing.

27 And Board of Prison Terms, just because they've
28 always done it, because they've always done what they've done,

1 is why you came in and had to do some semi-house cleaning.

2 MS. DALY: Right.

3 CHAIRMAN BURTON: Because they didn't always do
4 stuff right.

5 MS. DALY: Right.

6 I think the questions that you submitted to us
7 are questions that we're looking at. I don't have an answer for
8 you because I'm not familiar with the YOPB.

9 CHAIRMAN BURTON: Thanks a lot.

10 Senator Johnson.

11 SENATOR JOHNSON: Thank you, Mr. Chairman.

12 I'm looking for a way to frame this as a
13 question.

14 CHAIRMAN BURTON: Is it not the case.

15 SENATOR JOHNSON: Thank you for the suggestion,
16 sir.

17 You mentioned that you're working, and the other
18 individuals, working a five-day work week.

19 MS. DALY: Yes.

20 SENATOR JOHNSON: You're paid the same salary as
21 a Member of the Legislature. Most of the 120 Members of this
22 Legislature put in a lot more than a five-day work week. Many
23 of us find ourselves working on Saturdays and Sundays. Many of
24 us finds ourselves in our offices late at night, preparing for
25 the following day's legislative activities.

26 Why should you be any different?

27 MS. DALY: The Commissioners that are working
28 their cases and doing hearings Monday through Thursday are

1 arriving at the institutions at 8:00; they work straight through
2 the day without a lunch period. They finish their hearings
3 anywhere between, depending on how the hearings go, it could be
4 3:30, it could be 8:30 at night. I've been at an institution
5 sometimes until 11:00 o'clock at night trying to finish up
6 hearings.

7 SENATOR JOHNSON: And the same would be true of
8 the overwhelming majority of the Members of this Legislature.

9 Yet, if the law says we're to be in a session,
10 we're there.

11 So, I'm troubled by the answers to the earlier
12 questions. And I did try and frame it in the way of a question.
13 Let me try again.

14 Why should you be treated any differently than
15 Members of the Legislature? Why should the expectations of what
16 you do be any different than Members of the Legislature?

17 MS. DALY: I'm not sure that, maybe, any answer
18 that I would give you termed that way would be satisfactory to
19 you.

20 The days are long. There's a lot of reading and
21 preparation work that has to go into the hearings.

22 On the Fridays when the Commissioners are doing
23 administrative work, for the last two Board meetings they've had
24 12 additional cases, two full boxes of cases that have been
25 mailed to them that they have to review, and read, and be ready
26 to prepare.

27 These are individuals that do all of their own
28 clerical work, do all of their own travel, do all of the

1 administrative work.

2 SENATOR JOHNSON: Wait.

3 How many deputy commissioners are there?

4 MS. DALY: No, the Commissioners. There are nine
5 of us Commissioners. I'm Chairperson and we have eight.

6 SENATOR JOHNSON: How many deputy commissioners,
7 I said, are there?

8 MS. DALY: We have 67.

9 SENATOR JOHNSON: Sixty-seven deputy
10 commissioners, and what's the total staff that you have
11 available?

12 MS. DALY: Total staff, there's 277 allocated
13 positions to the Board. We have approximately one-third of
14 them vacant.

15 SENATOR JOHNSON: You know, I'm predisposed to
16 support, you but you're digging yourself into a hole with me
17 when you're poor-mouthing about these poor Commissioners, who
18 are earning the same salary that I'm earning. And my goodness,
19 they have to work sometimes until 8:30 at night, so obviously,
20 Friday should be an opportunity for them to deal with their
21 personal issues, and so on, and prepare for work they may
22 perform the following Monday.

23 Again, it would seem to me, regardless of where
24 one's coming from philosophically, if we have a backlog, and the
25 law requires these things to be dealt with, it's simple.

26 I mean, any job, whatever it is, if the required
27 work isn't being performed in the time allotted for that,
28 there's one of two solutions. Either work more, and because the

1 law requires you to work on Friday you ought to be doing that.
2 And if common sense says the only way you're get there is by
3 working Saturday as well, and there's no prohibition on working
4 on Saturday, frankly, you ought to be doing that.

5 With all that kind of staff support, I just don't
6 buy into that you're all, with respect, that you're all that
7 overworked.

8 I'm prepared to support you today, but I find
9 those answers less than satisfactory. Either you work harder,
10 or you say, you know what, we need more people to get this done.
11 But to allow the backlog to continue is not right.

12 CHAIRMAN BURTON: Senator Romero.

13 SENATOR ROMERO: Thank you.

14 In your statement, you discussed the
15 inconsistency at institutions in terms of having individuals
16 with adequate training properly setting up the equipment to
17 record comments and testimony.

18 What are you doing to make sure that we don't see
19 these inaudibles recorded? How many inaudibles in a report
20 do you consider to be too extensive? And who makes that
21 determination? Also, what efforts are made, if any, to go
22 back and try to fill in where those inaudibles appear?

23 MS. DALY: The first question as far as what are
24 we doing for the equipment, the equipment has been a little bit
25 troubling. We are working with CDC. I just sent out a
26 brand-new memo and working with Mr. Alameda at CDC, and it gives
27 the complete instructions as to how the machines are to be set
28 up.

1 One of the problems that we had is that the
2 machines are broken down, and sometimes they're moved from
3 hearing room to hearing room, and we don't always have the same
4 people that are putting them back together. So, not only
5 does -- the CDC staff has been trained and have all the visuals
6 on how to make sure the machines are set up right, they need to
7 be independent so they are truly a backup system, so that both
8 machines aren't recording off of the same lead-in, so if you
9 have one that has faulted, the other one is, too.

10 So, we have also given that same -- the same
11 instructions to the Commissioners, to the deputy commissioners,
12 to make sure they check the machines when they get there to make
13 sure they are working okay. Any time there is problem with the
14 machine, they call headquarters, and we try to get a new machine
15 out there.

16 As far as how many inaudibles are too many
17 inaudibles, and who decides, when we have a case with a lot of
18 inaudibles, our decision -- our legal staff goes through, and
19 they review the cases. They listen to the tapes, and if they
20 absolutely can't discern what it is, it's an inaudible and it
21 can't be put back in. And we'll have two or three people try to
22 listen and decipher if they can make out what the word was.

23 But too many inaudibles, when it comes in and, if
24 you don't have any idea what was meant, that the inaudibles
25 could leave out some very important clarifying or legal
26 information. And when you have -- I don't think there's any one
27 thing that says how much is too much. Could be a whole hearing
28 went good, but the decision part didn't record at all, so that

1 has to be redone.

2 SENATOR ROMERO: Do you find any patterns at all,
3 any statistics with respect to testimony provided in English, or
4 Spanish, or Korean? Any statistics you can give us as to where
5 these inaudibles show up?

6 MS. DALY: No, I don't have any stats on --

7 SENATOR ROMERO: Is it possible to perhaps take a
8 look at that and provide us?

9 MS. DALY: Sure, we could take a look at that.

10 CHAIRMAN BURTON: Senator Knight.

11 SENATOR KNIGHT: Thank you.

12 Considering the discussion on your five-day work
13 week and what you do, do you have in mind any Legislator to
14 carry the legislation to change the bill?

15 MS. DALY: No, I don't.

16 SENATOR KNIGHT: Thank you.

17 CHAIRMAN BURTON: Senator Karnette.

18 SENATOR KARNETTE: To get back to the battered
19 woman's syndrome, you said that people have training?

20 Now, I also carried a bill related to that.

21 MS. DALY: Yes.

22 SENATOR KARNETTE: After the training, what kind
23 of information are you provided on these individual cases prior
24 to the hearings? Because this was before Senator Burton's bill
25 and mine, so what kind of information do people get?

26 MS. DALY: Well, the Commissioner and the deputy
27 commissioner that are conducting the hearings have the Board
28 report, all of the investigative reports. If it is a battered

1 woman's syndrome case, and we've done additional investigative
2 work, they have all of that confidential information that is a
3 part of that investigation.

4 So, if they have any questions, they can consult
5 with the investigators. They can be briefed.

6 And I think that they go into the hearing
7 prepared with a lot of information.

8 SENATOR KARNETTE: So, they have a little
9 different outlook, I hope?

10 MS. DALY: Yes.

11 SENATOR KARNETTE: Thank you.

12 CHAIRMAN BURTON: Just one other thing, and I
13 hope we have a mistake here in our files. It says that the
14 compensation for a member of the Board is \$99,693. The
15 compensation for the Chairperson is \$99,343.

16 Do you get less money because you've got to type
17 or what?

18 [Laughter.]

19 MS. DALY: I think I make about three hundred a
20 month more than the Commissioners.

21 CHAIRMAN BURTON: Then it's obviously worth it.

22 [Laughter.]

23 CHAIRMAN BURTON: Before we have witnesses in
24 support, Senator Presley, do you know what the requirements are
25 as far as battered women syndrome instruction, or whatever?
26 What's the hours required; do you know that, Bob?

27 SENATOR PRESLEY: I don't.

28 CHAIRMAN BURTON: Anybody from the Department

1 know that? Because they're required to have it, but it seems
2 like, except for your history before you got there, I'm sure you
3 learned nothing new, and when you got there, less than eight
4 hours.

5 Do you know, Bill?

6 All right, witnesses in support.

7 MR. MABRY: Chairman Burton and Rules Committee
8 Members, my name is Roy Mabry. I'm the State President for the
9 Association of Black Correctional Workers.

10 I'm here today to support Carol Daly for a Board
11 of Prison Terms member. Also, for the sake of time, that same
12 support unanimously for the other two Board members that's
13 coming up next.

14 Make sure I got my glasses so I get the name
15 accurate.

16 I have a great history with one of the Board
17 members that's coming up for approval today, and that's
18 Mr. Booker Welch. In the early '80s, Booker Welch was a
19 founding chapter of one of the chapters of the Association of
20 Black Correctional Workers back in Vacaville. And that was some
21 troubling times during those days, and he did a lot of things to
22 sort of bring things up to bore.

23 Mr. Jones Moore, whom I have a great respect in
24 history for from my work with him through CCPOA, which he's been
25 a long-term member.

26 I think the appointments themselves, along with
27 Carol, the sensitivity that these people have demonstrated and
28 people skills in dealing with people throughout their history is

1 a great appointment for the Board of Prison Terms. I think with
2 the sensitive issues that you're dealing with relating to
3 releasing or non-releasing, all the politics that's going on,
4 whether we should do it or shouldn't we do it, the legal things
5 that's occurring, I think that these people are in for some
6 things that they have never seen before. And I wish them good
7 luck in their hopefully confirmed appointments today.

8 And Carol, to you good luck.

9 MS. DALY: Thank you very much.

10 CHAIRMAN BURTON: Thank you.

11 SENATOR KARNETTE: I was wondering, to bring up
12 this thing about training for battered woman's syndrome, do you
13 know anything about that?

14 MR. MABRY: I've got some knowledge. I don't
15 know the accurate amount of time that's required.

16 CHAIRMAN BURTON: We'll get that from the
17 Department, Senator.

18 SENATOR KARNETTE: Okay.

19 CHAIRMAN BURTON: How many members in the Black
20 Correctional Officers organization?

21 MR. MABRY: We have about 2400 paid members, and
22 a total of about 3600 members.

23 CHAIRMAN BURTON: Have you ever thought of using
24 that block to take on Novey?

25 [Laughter.]

26 MR. MABRY: No. I've got great respect for
27 Mr. Novey, and I've actually learned from him.

28 SENATOR JOHNSON: That was a rhetorical question.

1 MR. MABRY: Okay.

2 CHAIRMAN BURTON: Sheriff.

3 SHERIFF BLANAS: Mr. Chairman, Committee, I'm
4 Sheriff Lou Blanas, Sheriff of Sacramento County.

5 I'm here to urge you to support Carol Daly and
6 confirm her. Carol is over a 30-year veteran with the Sheriff's
7 Department, rose through all ranks of the Sheriff's Department
8 to Undersheriff.

9 Now, one good thing about it, she wasn't trained
10 by Bob Presley. She was trained by me, so we're in pretty good
11 shape in that area.

12 [Laughter.]

13 SHERIFF BLANAS: But the bottom line is, Carol is
14 very well thought of in the law enforcement community, also in
15 the Sacramento community. She did a great job as my
16 Undersheriff, second in command, controlling a workforce of over
17 2300 employees and also a budget of about \$250 million.

18 And I know that three months ago, she was put in
19 charge as Chairman of the Board of Prison Terms. And all's I
20 can say is, if this Committee gives her a chance, you're going
21 to see a lot of new, innovative changes in relationship to the
22 job that the Commissioners and deputy commissioners do over
23 there. And one of the issues is, I'm sure that the backlog will
24 be reduced to nothing, and they'll be back working five days a
25 week, if Carol's got anything to say about it.

26 Now, as Undersheriff, the Undersheriff of the
27 Sheriff's Department is usually a disciplinarian and has to work
28 and evaluate cases. And I think it goes right along side with

1 what she does in relationship to evaluating cases on a daily
2 basis.

3 One of the best things about Carol is, she's
4 fair. She's sincere.

5 And the next speaker I'd like to introduce is the
6 President of the Deputy Sheriffs' Association, who's usually on
7 the other side of the table on disciplinary cases, Jerry Moore.

8 CHAIRMAN BURTON: Is Wendel Phillips here?

9 [Laughter.]

10 SHERIFF BLANAS: I think he's working for Novey
11 now.

12 [Laughter.]

13 SHERIFF BLANAS: Thank you very much.

14 MR. MOORE: Chairman and Members of the
15 Committee, I'm Jerry Moore, President of the Sacramento County
16 Deputy Sheriffs' Association.

17 Wendel Phillips is no longer in that position.

18 I'm also the Vice President of the Northern
19 Alliance of Law Enforcement, and I've worked with Carol Daly for
20 many years, and did sit on the other side of the table in
21 representing employees who have come before her for hearings.

22 We have always found her very fair, thorough,
23 and working at least five days a week.

24 And I'll say this. It's not always that labor
25 and management comes together on issues, but on this one, we can
26 all stand united. Law enforcement throughout this region are in
27 support of Carol Daly for this position.

28 Thank you.

1 MR. HEMBY: Mr. Chairman, Members, I'm Bill
2 Hemby with the California Organization of Police and Sheriffs.

3 We'd just like to join with the Sheriff and the
4 member from the Sheriffs' Association in offering our support to
5 Carol Daly.

6 Thank you very much.

7 CHAIRMAN BURTON: Witnesses in opposition?
8 Support still.

9 MR. SCHMIDT: Mr. Chairman and Committee Members,
10 my name is Bill Schmidt. I'm an inmate attorney. I'm with the
11 firm of Diamond and Schmidt.

12 I've had the opportunity to represent inmates in
13 front of all three of the Commissioners. They've all three
14 shown a welcome change to the way that the Board of Prison Terms
15 lifer hearings used to run in the past, and we support their
16 nominations.

17 Thank you.

18 CHAIRMAN BURTON: Any witnesses in opposition?
19 Pleasure of the Committee?

20 SENATOR JOHNSON: Move it.

21 CHAIRMAN BURTON: We will be back in touch on
22 those issues.

23 Call the roll.

24 SECRETARY WEBB: Senator Karnette.

25 SENATOR KARNETTE: Aye.

26 SECRETARY WEBB: Karnette Aye. Senator Knight.

27 SENATOR KNIGHT: Aye.

28 SECRETARY WEBB: Knight Aye. Senator Romero.

1 SENATOR ROMERO: Aye.

2 SECRETARY WEBB: Romero Aye. Senator Johnson.

3 SENATOR JOHNSON: Aye.

4 SECRETARY WEBB: Johnson Aye. Senator Burton.

5 CHAIRMAN BURTON: Aye.

6 SECRETARY WEBB: Burton Aye. Five to zero.

7 CHAIRMAN BURTON: Did you have any family here?

8 MS. DALY: No, thank you. My family is here, all
9 of you.

10 CHAIRMAN BURTON: Next, Jones Moore.

11 Senator Machado.

12 SENATOR MACHADO: Thank you, Mr. Chairman. I'm
13 here to introduce Mr. Jones Moore and recommend his confirmation
14 as a member of the California Board of Prison Terms.

15 He is a long-time resident of San Joaquin County.
16 He has 25 years of experience in corrections, both in the Youth
17 Authority and the Department of Corrections. He's been an
18 active volunteer in the community. I have worked with him over
19 the last seven years on a variety of issues. In particular,
20 I've noticed that he's also been an advisor for Women Escaping a
21 Violent Environment.

22 It's without hesitation that I urge your
23 favorable consideration.

24 CHAIRMAN BURTON: Notwithstanding the fact that
25 it's an age-old adage, you should never trust somebody with two
26 last names?

27 [Laughter.]

28 SENATOR MACHADO: In this business, you learn to

1 be accommodating.

2 CHAIRMAN BURTON: Thank you.

3 MR. MOORE: Thank you. Good afternoon, Mr. Chair
4 and Senators. It's a pleasure and an honor to be here today.

5 I'm here with great alacrity to answer and
6 respond to any questions that you may have at this point, as
7 well as, Don Novey sent me here.

8 [Laughter.]

9 CHAIRMAN BURTON: In one of the questions, you
10 responded about the need to reform the Mentally Disordered
11 Offender Program. You've identified -- Sexual Offenders. You
12 identified areas where, on both sides of it, that some people
13 ought to be let out that maybe aren't, and some people shouldn't
14 be let out that maybe are.

15 And the Supreme Court ruled yesterday, actually,
16 in a seven-to-two decision that in order to keep someone in, you
17 really had to kind of prove, I don't know, a point.

18 MR. MOORE: At least my understanding from what I
19 heard about that decision is that specifically that they have to
20 start to act up while they're there continuously, be acting up,
21 to find a response to that.

22 CHAIRMAN BURTON: I just read an article about
23 it, but given it was seven-to-two, I think it couldn't have been
24 too lose. Forget what they did.

25 What are your viewpoints on such?

26 MR. MOORE: Well, in actuality in terms of
27 Commissioners, we don't actually deal with those.

28 CHAIRMAN BURTON: Just have your thoughts for the

1 hell of it.

2 MR. MOORE: Well, we have a staff that deals with
3 the issue specifically. We try to monitor and look at those
4 people adequately and make sure that we make the right decisions
5 in terms of dealing with them. Don't always -- you don't always
6 find the right or make the right decision, but we try to look
7 into the issue specifically as much as possible to make the
8 right decision.

9 CHAIRMAN BURTON: When did you get appointed to
10 the Board?

11 MR. MOORE: I was appointed May the 14th of last
12 year.

13 CHAIRMAN BURTON: How much training did they give
14 you on the battered woman deal?

15 MR. MOORE: I've had eight hours.

16 CHAIRMAN BURTON: So, is eight hours, I guess --

17 MR. MOORE: That's kind of the working standard
18 as far as I know. They didn't tell me that I needed any more.

19 I couldn't do any hearings, or hold any hearings
20 until I received the eight hours.

21 CHAIRMAN BURTON: Did you have any experience
22 with the issue before?

23 MR. MOORE: None.

24 CHAIRMAN BURTON: Did you think that the eight
25 hours was sufficient?

26 MR. MOORE: It opened the door for me. I'm still
27 doing some independent research myself, trying to learn more
28 about it. I've only held one hearing dealing with a woman with

1 a BWS problem.

2 CHAIRMAN BURTON: So, you think more time would
3 have been helpful?

4 MR. MOORE: Yes, sir, I think so. I'm doing,
5 like I said, I'm doing my own independent work on it.

6 One of the other Commissioners, Sharon Lawin, has
7 given me some information to further enlighten me on the issue.

8 CHAIRMAN BURTON: This is a question at the
9 request of Senator Vasconcellos.

10 There was a hearing on an inmate. Whom, I have
11 no idea. It was a letter from Senator Vasconcellos in support
12 of the inmate. The letter requested it be read in the record,
13 and according to the Senator, the letter was paraphrased and
14 criticized by the deputy commissioner. I think it's fairly
15 recently.

16 MR. MOORE: It was back in December, I believe.

17 CHAIRMAN BURTON: First of all, what is the
18 policy if an elected official or members of the public send
19 letters that they want read into the record? Is it up to some
20 deputy commissioner, one, to paraphrase it, and two, to make
21 comments on it?

22 MR. MOORE: In actuality, Senator, it kind of
23 slipped by me on that particular issue that day, although I did
24 review the letter afterwards in our discussionary or decision
25 process.

26 There was some concerns I had with the letter in
27 terms of that the Senator's comments were -- I really don't
28 believe that the Senator actually wrote it.

1 CHAIRMAN BURTON: I could imagine.

2 MR. MOORE: There was some concern -- the first
3 paragraph in there, he talks about not knowing anything about
4 the case, first of all, initially, right off the bat. And then,
5 the rest of it was kind of accusatory process. So, the deputy
6 told me that he was kind of frustrated at the letter itself --

7 CHAIRMAN BURTON: That's not up for the God damn
8 deputy.

9 MR. MOORE: No, sir, I understand.

10 CHAIRMAN BURTON: You know what's up to the
11 deputy when a State Senator sends him a letter and says, "I want
12 it read into the record," he reads it into the record, or he can
13 go looking for work elsewhere.

14 It isn't up to the deputy to figure out what a
15 Senator's doing.

16 I'm reading the letter. "A parole is scheduled
17 for Mr. Walter McColtrill. I asked the letter be read in its
18 entirety. My office has received substantial material attesting
19 how he has come to terms with his past." Saving a guard's life,
20 remaining disciplinary free, different things that he's done, on
21 and on.

22 The only thing I see in here that somebody could
23 find offensive is that there was a false 115 filed against him.
24 An undated derogatory memorandum mysteriously appeared in his
25 file. If that offended somebody, it shouldn't have offended the
26 deputy because nobody was accusing him. So, if it happened, it
27 was probably somebody in someone's office.

28 It isn't up to deputies to do anything except, if

1 an elected Senator sends a letter, asks that it be read, it was
2 like short-shot six minutes. They read it in. They don't
3 comment.

4 You know, as you said, it got by you. But
5 there's nothing in here that said he didn't have -- that might
6 have been a different one -- but he had knowledge of the case.

7 MR. MOORE: Well, I'm not sure if that's the same
8 letter that I had, Senator.

9 CHAIRMAN BURTON: It's the one he --

10 MR. MOORE: The one I saw said he didn't have
11 knowledge of the particular case.

12 CHAIRMAN BURTON: Well, even that, you can put it
13 in the record. Here's this guy sending us something, he has no
14 knowledge, but just in the future, instruct the deputies.

15 And again, it would take I don't know how long,
16 and how many new appointees, and how many retirements to clean
17 out the Board of Prison Terms. I think the last, probably
18 starting with Bordinaro, maybe excluding, that we've done pretty
19 well and have open-minded people, whether they come from
20 background of law enforcement or not.

21 But a lot of this stuff has been ingrained in
22 these people from the beginning. And I mean, there's more than
23 once that I wiped their budget out.

24 MR. MOORE: Senator, if I may say, personally I
25 don't have a problem with any elected official. I would make
26 sure that in the future --

27 CHAIRMAN BURTON: Make sure they don't make the
28 comment.

1 I'll tell you one that was a case before you with
2 a battered woman down in -- I can't remember where it was -- but
3 some of my staff went there. And the DA from L.A. made comments
4 about my staff shouldn't have been there; it was improper that I
5 wrote a letter, and he made some comments. I called his boss
6 and wanted to know by what right he had commenting on anything
7 except -- which again isn't your deal -- but the evidence in the
8 case. In other words, that's what they're there for.

9 But anyway, I wish you well.

10 Senator Johnson.

11 SENATOR JOHNSON: Thank you, sir. Thank you,
12 Senator Burton.

13 I tried earlier to frame this as a question with
14 a notable lack of success, so I'll simply say that I share, and
15 coming from a totally different political perspective, I share
16 Senator Burton's concern about dealing with the backlog. And if
17 that means people need to work longer hours, and work more days
18 of the week, then they should do that.

19 And if it means they need to come to the
20 Legislature and say, you know, we just don't have enough people,
21 and we don't have the resources to deal with that backlog, then
22 you ought to do that.

23 That's just, you know, a comment that I hope
24 you'll take seriously to heart.

25 MR. MOORE: Yes, sir, Senator, thank you. We are
26 all in agreement that we're trying to bring the backlog down,
27 and actually we're down to about a thousand cases now. And when
28 the bill passed, and it was instituted, we were running around

1 2500. So, we have been dropping that load down, and we're
2 committed to doing that, and we will do that, sir.

3 We put in long hours every day. Many nights I
4 don't get into bed until after 11:30 from doing prepping and
5 preparing for the next day.

6 So yes, sir, we will look at that. In fact, I
7 don't know how your calendar is in terms of carrying
8 legislation, would you be interested?

9 SENATOR JOHNSON: Come see me.

10 MR. MOORE: All right, sir. We'll do that

11 SENATOR JOHNSON: Senator Knight?

12 SENATOR KNIGHT: No questions.

13 SENATOR JOHNSON: Senator Karnette?

14 SENATOR KARNETTE: I would like to again bring up
15 battered woman's syndrome and Marva Wallis. Is that going to
16 come back to be looked at again?

17 MR. MOORE: Yes, ma'am. We're looking at it.
18 It's in review process. Hopefully, we'll be able to come back
19 again to the table for us to take another look at.

20 Unfortunately, it's a nine-member panel, and
21 everybody has different issues. You know, they look at things,
22 interpretation. It's just like when you have a room full of
23 lawyers. Each time you get a different interpretation from an
24 individual.

25 Hopefully, when it comes back to us again as
26 whole, we can fix the problem.

27 SENATOR KARNETTE: Thank you.

28 SENATOR JOHNSON: Witnesses in support. We've

1 already had a few.

2 MR. NOVEY: This works out well. Chairman
3 Johnson, Committee Members, my name is Don Novey. I'm the
4 present President of California Correctional Peace Officers
5 Association.

6 The man with two last names, as the Indians might
7 call him, I think is the finest candidate for this position.
8 We've known each other for over 25 years. He's probably the
9 best candidate west of Padooka that one would ever see.

10 He's also a modest man. For the last 15 years,
11 Mr. Moore and I have had worked with the battered woman's
12 syndrome through WEAVE, something that Mr. Johnson knows with
13 B.T. Collins, Women Escaping a Violent Environment. We've
14 worked on these issues. We've gone to the safe houses, from
15 Lassen to Los Angeles. It's something that's a favored thing
16 with us.

17 Mr. Moore's also worked with Make a Wish
18 Foundation, the Boys and Girls Clubs. As exhibited by Senator
19 Machado, he's been actively involved in the community outside of
20 his line of work. I think that's a quality every gubernatorial
21 candidate should carry when they go in front of this Committee.

22 On behalf of the men and women, we think, that
23 work the toughest beat in the state, my dear friend Jones Moore,
24 I strongly recommend our endorsement in front of this august
25 Committee.

26 SENATOR JOHNSON: Thank you very much. Further
27 witnesses in support?

28 MR. HEMBY: Very quickly, Mr. Chairman, Bill

1 Hemby with the California Organization of Police and Sheriffs.

2 I've known Mr. Moore when he was working down
3 here. We've done some good work together, and we support him
4 wholeheartedly, ask you for endorsement of his appointment.

5 Thank you.

6 SENATOR JOHNSON: Thank you.

7 Witnesses in opposition?

8 Have you any family with you that you'd care to
9 introduce?

10 MR. MOORE: No, Senator, no family.

11 SENATOR JOHNSON: What's the pleasure of the
12 .Committee?

13 SENATOR KNIGHT: Move it.

14 SENATOR JOHNSON: Secretary, call the roll.

15 SECRETARY WEBB: Senator Karnette.

16 SENATOR KARNETTE: Aye.

17 SECRETARY WEBB: Karnette Aye. Senator Knight.

18 SENATOR KNIGHT: Aye.

19 SECRETARY WEBB: Knight Aye. Senator Romero.

20 SENATOR ROMERO: Aye.

21 SECRETARY WEBB: Romero Aye. Senator Johnson.

22 SENATOR JOHNSON: Aye.

23 SECRETARY WEBB: Johnson Aye. Four to zero.

24 SENATOR JOHNSON: Congratulations, sir.

25 MR. MOORE: Thank you, sir.

26 SENATOR JOHNSON: Mr. Welch, welcome, sir.

27 MR. WELCH: Thank you, sir. Senator Burton,
28 Members of the Rules Committee, thank you for the opportunity to

1 appear before you today.

2 I'm requesting that you give favorable
3 consideration to confirming me as a Commissioner for the Board
4 of Prison Terms. I consider it a privilege, an honor, to have
5 been appointed by the Governor to this position.

6 I am committed to performing my duties in a
7 manner that reflects professionalism. I'm looking forward to
8 the challenge.

9 I've had the great privilege of serving my
10 country for almost 40 years now; 21 of these years was with the
11 United States Air Force, 17 I've been with the Department of
12 Corrections, and one year almost with the Board of Prison Terms.

13 So, I'm looking forward to the challenge of
14 working as a Commissioner on the Board of Prison Terms. And with
15 that, I'd like to answer any questions that you might have.

16 CHAIRMAN BURTON: What is the Jack and Jill of
17 America group? They sent a letter of support, and I just hadn't
18 heard of them.

19 MR. WELCH: It's a social organization that
20 promotes the welfare of family and children.

21 CHAIRMAN BURTON: You had the eight-hour battered
22 woman's syndrome?

23 MR. WELCH: Yes, sir, I sure did. I had four
24 hours when I first started, and just recently I had another four
25 hours.

26 CHAIRMAN BURTON: Do you think eight's enough?

27 MR. WELCH: If you do additional reading on it.
28 And there's also a film that's available. I forget the name of

1 the expert on it. That's available for us to watch.

2 CHAIRMAN BURTON: They don't require you to watch
3 the film?

4 MR. WELCH: Yes.

5 CHAIRMAN BURTON: They do require you to watch
6 the film?

7 MR. WELCH: They required me to watch it.

8 CHAIRMAN BURTON: As part of the eight or in
9 addition to the eight?

10 MR. WELCH: It was part of the eight.

11 CHAIRMAN BURTON: More out of curiosity, who
12 teaches or does the indoctrination, or whatever?

13 MR. WELCH: We have different members at the
14 Board of Prison Terms that's been certified.

15 CHAIRMAN BURTON: Certified in the teaching of
16 that.

17 Is it just like you and me, or how many people?
18 Is it a one-on-one deal?

19 MR. WELCH: Well, the last class we had was at
20 our annual training meeting, so it was nine Commissioners. And
21 also the deputy commissioners was included in it also, so we're
22 looking at maybe 75 to 80 folks was in the class.

23 The first class was just Carol and Mr. Granlund,
24 so the three of us, because we were all appointed at the same
25 time.

26 CHAIRMAN BURTON: And you do not hear any
27 battered women cases until you've done the eight hours?

28 MR. WELCH: Exactly. I have not heard one yet,

1 but I was scheduled to hear one this week.

2 CHAIRMAN BURTON: Senator Johnson.

3 SENATOR JOHNSON: Thank you.

4 Just to show that I'm an equal opportunity nag,
5 the issue, and I'm not going to frame it as a question, but the
6 issue of working on the backlog is very important for people,
7 regardless of where they're coming from politically. The law
8 requires it, and that's what should happen.

9 I won't nag you any further, but I hope you'll
10 take that very much to heart.

11 MR. WELCH: Thank you. I'm totally committed to
12 reducing the backlog.

13 CHAIRMAN BURTON: Senator Romero.

14 SENATOR ROMERO: Thank you.

15 I read your responses. They're actually
16 remarkably similar to the previous nominee.

17 I'd like to just ask you if you could comment on
18 a couple of points that actually both of you did raise, and
19 that's with respect to the psychological screening. You had
20 indicated that if you were to make an improvement, that you
21 might think about having the inmate go ahead and have additional
22 time with a psychologist.

23 Can you expand on that, as opposed to what's
24 given right now?

25 MR. WELCH: Yes, I'd be happy to.

26 Currently, an inmate will probably spend
27 somewhere in the neighborhood of one to two hours with a
28 psychologist or psychiatrist in order to prepare a report to

1 determine whether or not he's suitable for parole.

2 In my opinion, there should be more time
3 available to make this assessment.

4 SENATOR ROMERO: I agree with you.

5 MR. WELCH: I think I shared with Mr. Sherman
6 when I met with him, sometime ago the Department of Corrections
7 used to have two programs. One was called the Category X
8 Program. That was a program whereby the inmate underwent three
9 months of intense therapy, a lifer that was coming up on his
10 earliest possible parole date. He underwent three months
11 intense therapy.

12 And also there's a Category T Program, where an
13 inmate will undergo somewhere between 18 [sic] to two years of
14 treatment and therapy.

15 And in those programs, it's pretty difficult to
16 fake suitability or to disguise a mental illness. I think the
17 inmates received a lot better overall evaluation.

18 And when I read some of those old reports, I feel
19 like I have more insight into the inmate. Some of the reports
20 now that I read, I don't feel that I, as a Commissioner, have
21 enough insight in terms of whether this inmate would or will
22 present a threat to the American people if he's released.

23 So, when I said that, that's what I meant. I
24 think that there should be more intense evaluation process in
25 order to determine whether an inmate's a threat.

26 And one of the particular areas that I think
27 should be given to is whether or not the inmate has come to
28 terms with the crime, whether or not it was an alcohol-related

1 problem, and if the inmate has come to terms with that, or any
2 other psychological problems that may have been a problem.

3 SENATOR ROMERO: And in your opinion, the one or
4 two hours evaluation, is that budget-driven? What are you
5 hearing as far as what seems to me, at least, a very minimal
6 amount of time on some type of a psychological assessment?

7 MR. WELCH: You know, I really don't know the
8 reasons behind it. I just know that when I read the reports,
9 there just is that feeling that I need more additional
10 information. I need the inmate to have a more in-depth
11 psychiatric evaluation before I would make a determination on
12 him.

13 SENATOR ROMERO: Thank you.

14 CHAIRMAN BURTON: Senator Knight.

15 SENATOR KNIGHT: No questions.

16 CHAIRMAN BURTON: Senator Karnette.

17 SENATOR KARNETTE: I notice in your background
18 that you were an associate warden. And I notice Ms. Daly was
19 talking about cutting back on the number of the backlog, and
20 that we had spoken earlier about the cooperation of the various
21 prisons, having everything ready for you, and having packets for
22 you.

23 How do you see the Board of Prison Terms, I think
24 Ms. Daly commented on this, but what do you think you can do to
25 make things more efficient in that area? How do you get the
26 prisons to really cooperate a little better?

27 MR. WELCH: I think it's a stakeholder thing. I
28 think all the stakeholders have to understand how important the

1 process is.

2 The Department of Corrections, they have a whole
3 section. They have a classification staff representative.
4 That's his sole job, to make sure that the reports are prepared
5 when we get there, to make sure that the equipment is set up.

6 I feel that if we have problems, we need to be
7 letting the institution know. It shouldn't be just the
8 Department of Corrections or a Board of Prison Terms issue. It
9 should be an issue that involves all the stakeholders.

10 When we have problems, and what I do when I have
11 problems, before I leave I will meet with the Board and I'll
12 meet with the classification staff representative, and I will
13 let him or her know what the issues are, and how we can make
14 those issues better.

15 SENATOR KARNETTE: Suppose they aren't made
16 better? I know sometimes, for whatever reasons, they aren't.
17 What's the next step? What would be your next step if nothing
18 happened?

19 MR. WELCH: If nothing happened, I think it would
20 be -- I would discuss it with the Chairperson, and the
21 Chairperson would -- and I'm sure she does this already -- she'd
22 meet with the Director of Corrections, and she would point out
23 the different issues that we have, and she would resolve it at
24 her level.

25 It's just really important, like I said before,
26 that all the stakeholders get involved. And I've talked to
27 Chairperson Daly, and she said she'd met with Mr. Alameda and
28 they have a good working relationship.

1 And I think if we give her some time, I think
2 those issues you're going to see them dissipate because she's
3 very dedicated and very diligent in trying to resolve these
4 issues.

5 And from talking to her, you know, in my position
6 I'm mostly on the road, conducting hearings. But from talking
7 to Chairperson Daly, she's working with the Department of
8 Corrections. She's working with Senator Presley to resolve
9 those issues. And if she can't get it resolved between them,
10 she always has Senator Presley to go to.

11 SENATOR KARNETTE: That's right, and I know him,
12 too.

13 MR. WELCH: So, she's working real hard on
14 resolving those issues with the Department of Corrections. I
15 think within the next year, you'll see some real results if we
16 just give her a chance to do it.

17 SENATOR KARNETTE: I think some time efficiency
18 makes everybody just get along better, if they just really
19 concentrate on the job.

20 MR. WELCH: And if we just sit and talk about
21 this, and understand each other.

22 SENATOR KARNETTE: Understand, those tapes have
23 to work.

24 MR. WELCH: Exactly.

25 SENATOR KARNETTE: I think having a back-up
26 shouldn't have the same mike, or whatever. That's somewhat
27 silly. It's not a back-up then. In fact, you might even have
28 some on batteries just in case the power goes off.

1 MR. WELCH: That's an excellent idea.

2 CHAIRMAN BURTON: Do you have any family here,
3 sir?

4 MR. WELCH: Yes, I believe so. I have a wife
5 and my daughter, Cynthia Jones and Carolyn Wells.

6 CHAIRMAN BURTON: Welcome.

7 Witnesses in support, same as before. Come
8 forward, sir.

9 MR. SMITH: Senator Burton and Committee
10 Members, my name is Earl Smith. I'm Protestant Chaplain at San
11 Quentin Prison. I've served there for the last 19 years.

12 I met Mr. Welch while he was assigned at
13 Vacaville or Solano, before coming over to San Quentin. I
14 worked extensively with him. I'm here to speak in favor of his
15 confirmation.

16 As an aside, I know Mr. Moore, who you've already
17 confirmed, since birth. He and I were actually reared together.
18 And for your information, he was called Michael then.

19 But I'm just here, happy to say that I'm excited
20 about the confirmation of Mr. Welch. After being a chaplain at
21 the prison for 19 years, working with the lifers, working with
22 men that are coming before this Board, I know the need to have
23 people that will be open and honest in evaluating their
24 readiness to go back into society, and understand the need for
25 the safety of the society. I believe Mr. Welch fits those
26 criteria.

27 Thank you.

28 CHAIRMAN BURTON: How is my friend the warden

1 over at San Quentin?

2 MR. SMITH: She's doing great, and she told me to
3 tell you hello.

4 CHAIRMAN BURTON: Witnesses in opposition?
5 Hearing none, moved by Senator Johnson. Call the
6 roll.

7 SECRETARY WEBB: Senator Karnette.

8 SENATOR KARNETTE: Aye.

9 SECRETARY WEBB: Karnette Aye. Senator Knight.

10 SENATOR KNIGHT: Aye.

11 SECRETARY WEBB: Knight Aye. Senator Romero.

12 SENATOR ROMERO: Aye.

13 SECRETARY WEBB: Romero Aye. Senator Johnson.

14 SENATOR JOHNSON: Aye.

15 SECRETARY WEBB: Johnson Aye. Senator Burton.

16 CHAIRMAN BURTON: Aye.

17 SECRETARY WEBB: Burton Aye. Five to zero.

18 CHAIRMAN BURTON: Congratulations, sir.

19 MR. WELCH: Thank you, sir.

20
21 [Thereupon this portion of the
22 Senate Rules Committee hearing
23 was terminated at approximately.
24 2:35 P.M.]

25 --ooOoo--
26
27
28


CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of January, 2002.


EVELYN J. MIZAK
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

MEMBERS ABSENT

SENATOR JOHN BURTON, Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

PAUL KRASNOW, Member
State Teachers' Retirement Board

DOUG LINDSAY
Faculty Association of California Community Colleges

WILLIAM D. DAWSON, Chief Deputy Director
Mental Health Department

DEBRA HEUSEL
California Correctional Peace Officers Association

1 RAYNOR T. TSUNEYOSHI, Director
2 Department of Boating and Waterways

3 STEVE BAKER
4 Southern California Marine Association

5 BILL KRAUSS
6 Marina Recreation Association
7 California Association of Harbor Masters and Port Captains
8 California Marine Parks and Harbors Association
9 Western Boater Safety Group
10 Northern California Marine Association
11 California Marine Affairs and Navigations Conference

12 JERRY DESMOND, JR.
13 Recreational Boaters of California

14 STANTON C. HAZELROTH, Executive Director
15 California Infrastructure & Economic Development Bank
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

SENATOR JOHNSON: Governor's appointees, Paul Krasnow, Member, State Teachers Retirement Board.

Good afternoon, sir.

MR. KRASNOW: Good afternoon. Thank you very much for taking me first. I appreciate that.

SENATOR JOHNSON: You may fire when ready, sir.

MR. KRASNOW: Well, why don't you ask me something. You know, I'm coming up first. I have some personal problems, so why don't you just ask me some questions.

My friend just passed away. I have to get back to Los Angeles.

SENATOR JOHNSON: I'm very sorry.

MR. KRASNOW: My opening comments are -- you can just ask me whatever you want to ask me.

SENATOR JOHNSON: Questions from Members.

SENATOR KARNETTE: I don't particularly need to ask a question, but we did talk.

I would like to compliment you on your desire to keep the Teachers Retirement funds solvent, which I think is the biggest concern that I have, and I compliment you on that.

MR. KRASNOW: Thank you.

SENATOR KARNETTE: When we talked, I felt like you were a pretty sensible person, and I see no reason not to go along with your confirmation.

MR. KRASNOW: Thank you. It's a responsible position, being on this Board. It's not to be taken lightly.

1 SENATOR JOHNSON: Senator Knight.

2 SENATOR KNIGHT: If Betty thinks he's a
3 responsible person, I'll go along with that.

4 SENATOR JOHNSON: I'm sorry.

5 MR. KRASNOW: I understand.

6 SENATOR JOHNSON: I realize this is a difficult
7 time for you, but I would hope that we'd have some discussion
8 about proposals that are floating around to withhold
9 contributions, retirement contributions, and so on.

10 If you could just briefly give us your thoughts
11 about that. It seems to me that that it is potential for a
12 slippery slope in terms of deficit financing.

13 MR. KRASNOW: Well --

14 SENATOR JOHNSON: I know you've expressed concern
15 in the past about some of the investments in terms of overseas
16 investments, and so on. I guess I'm beginning to question
17 whether investments in the State of California make a whole lot
18 of sense.

19 MR. KRASNOW: Well, you know, investments
20 anywhere, investments are cyclical. Hopefully, for any pension
21 plan, which is a long-range investment, we have to look at -- we
22 have to be very global in our outlook in our investment plans.
23 There are going to be problems forever. There's never not been
24 a problem in any segment of our economy, and we just hope that
25 we do the best, and we work hard, and we do our due diligence.

26 It's very important that our Board be educated,
27 so when these issues come up to them, that they know what
28 they're talking about. They have to understand the terminology.

1 The educational process of our Board is extremely important.

2 As you know, we're an oversight. We do not make
3 the individual investments. But that being said, we need to
4 have the knowledge to do the oversight.

5 SENATOR JOHNSON: Do you have any idea what the
6 overall rates of return on total portfolio is?

7 MR. KRASNOW: Well, you know, the portfolio is so
8 diverse. I know that in the month of November alone, when the
9 Enron problem took place, we had a two-and-a-half billion dollar
10 increase in our portfolio rate, our portfolio value that month
11 alone.

12 We have some investments that have been returning
13 18, 20 percent, and we have some that are negative.

14 I don't know the exact number. I believe it's in
15 the -- we strive for 8-9 percent, is what we're looking for on a
16 constant basis.

17 SENATOR JOHNSON: Witnesses in support, please.

18 MR. LINDSAY: Doug Lindsay, Faculty Association
19 of California Community Colleges in support.

20 SENATOR JOHNSON: Further witnesses in support?
21 Witnesses in opposition.

22 Do you have any family members with you?

23 MR. KRASNOW: No, I don't.

24 SENATOR JOHNSON: What's the pleasure of the
25 Committee?

26 SENATOR KARNETTE: Move.

27 SENATOR JOHNSON: It's been moved. Secretary,
28 call the roll.

1 SECRETARY WEBB: Senator Karnette.

2 SENATOR KARNETTE: Aye.

3 SECRETARY WEBB: Karnette Aye. Senator Knight.

4 SENATOR KNIGHT: Aye.

5 SECRETARY WEBB: Knight Aye. Senator Romero.

6 SENATOR ROMERO: Aye.

7 SECRETARY WEBB: Romero Aye. Senator Johnson.

8 SENATOR JOHNSON: Aye.

9 SECRETARY WEBB: Johnson Aye. Four to zero.

10 SENATOR JOHNSON: Congratulations, sir.

11 MR. KRASNOW: Thank you very much.

12 SENATOR JOHNSON: Our condolences.

13 MR. KRASNOW: Thank you very much, and thank you
14 again for taking me quickly. I appreciate it.

15 SENATOR JOHNSON: William D. Dawson, Chief Deputy
16 Director, Department of Mental Health.

17 Welcome, sir.

18 MR. DAWSON: Thank you very much, Mr. Chairman.

19 Mr. Chairman and Members of the Committee, thank
20 you for considering confirmation of my appointment as Chief
21 Deputy Director in the California Department of Mental Health.

22 You asked me to prepare a brief statement of my
23 long and short range goals for the Department of Mental
24 Health. In thinking about these goals, I've reflected on about
25 33 years of experience in the executive branch of state
26 government, or providing consulting services to the executive
27 branch. This has included management positions and executive
28 positions in health, welfare, employment, and education

1 programs. It involves about 18 years of experience at the
2 deputy director level or above. I also had assignments as
3 Acting Director of Health Services, and Acting State
4 Superintendent of Public Instruction for almost two years.

5 In these roles, I tended to find the greatest
6 satisfaction in taking the laws that were provided to the
7 executive branch that created the programs for which I was
8 responsible and the direction from my supervisors, the
9 administration I was responsible to, and trying to optimize
10 three things.

11 The first was program effectiveness. And I tend
12 to look at that as carrying out precisely what it is that the
13 law intended to carry out. If we, in the executive branch, do
14 what the law says we're supposed to do, and do it well, then I
15 think that's a pretty good measure of effectiveness.

16 The second measure is efficiency. We have to do
17 that job at the lowest reasonable cost. We shouldn't spend more
18 doing that job than we need to.

19 And thirdly, the third leg on which I think most
20 all of our programs stand is what I call program equity or
21 fairness. We should deliver those programs in a way that's fair
22 and just for the people who are benefitted by the program and
23 for the people who pay for the program.

24 As an executive, the means to achieve these broad
25 goals for me have typically included improved operational and
26 strategic planning, improved organizational structures, improved
27 operational and information systems, improved staff recruitment,
28 selection, training, improved systems of accountability,

1 reductions in audit exceptions, and very importantly to me,
2 improved relationships with a very broad range of stakeholders,
3 both internal as external.

4 I wasn't brought in to be an expert in mental
5 health policy. I was asked to bring a different package of
6 skills to the table and to pay attention primarily to the
7 internal operations of the State Department of Mental Health.

8 We have an excellent staff in the Department of
9 Mental Health. And we are currently, as I implied that we
10 would, we are currently working on improving our strategic and
11 operational planning, involving our stakeholders, including
12 consumers and family members extensively, so that we make
13 conscious, thoughtful, practical decisions about what it is that
14 we're setting out to do, and that we stretch ourselves as much
15 as possible. Ensuring the best use of the resources that are
16 available to us so that at this time especially, when the
17 financial pressures are so great, we'll still be able to make
18 progress on the most important things. And then, I'm paying
19 particular attention to implementing improved accountability
20 systems so that all of our stakeholders know whether we're doing
21 what we set out to do.

22 I think we've made major strides in California's
23 mental health system since 1957, when basically the system
24 consisted of eight huge state hospitals. Despite this progress
25 since that time, many problems do remain to be solved, and these
26 are extensively documented in reports such as those of the Joint
27 Committee on Mental Health Reform and the Little Hoover
28 Commission.

1 A few of these challenges, access for those who
2 need mental health services to appropriate, high quality care
3 delivered by adequate numbers of professionally and culturally
4 competent providers, adequate and flexible funding streams,
5 integration of mental health services with other service, and
6 human service and justice programs.

7 I ask for your confirmation so that I can do my
8 best to cause good things to happen as a part of the
9 administration and the executive branch of state government.

10 Thank you. I'd be pleased to respond to any
11 questions.

12 SENATOR JOHNSON: Questions? Senator Romero.

13 SENATOR ROMERO: Thank you for your
14 presentation.

15 I'm particularly interested in what I understand
16 is an unusually high assault rate at Vacaville in particular.
17 I'm wondering, at least the statistics that I have seen show
18 that at the California Medical Facility that these assault rates
19 are much higher than for the rest of the prison.

20 Can you help me understand why this occurs, and
21 what steps are being taken to improve basically the safety of
22 the employees who are there at the facility?

23 MR. DAWSON: Yes, Senator Romero.

24 Vacaville is a state prison. The Department of
25 Mental Health operates a psychiatric program to attend to the
26 needs of the prisoners at Vacaville who have serious mental
27 illness.

28 I think that if you consider the constituency of

1 the prisoners at Vacaville, and then within that constituency,
2 those who have serious psychotic episodes, it's easy to see why
3 it's a very challenging population to serve, and why there may
4 be a frequency of incidents that are difficult to manage.

5 One of the things that we do is, we meet monthly.
6 Our Program Directors at Vacaville, the Psychiatric Program
7 Directors, meet monthly with representatives of the California
8 Correctional Peace Officers Association. That association
9 drafts the agenda. They put items on the agenda. Those items
10 get turned into action items to work on. We work with them to
11 get progress on those items.

12 The employee organizations perform a very vital
13 role for us. They bring to us ideas and experience, and they
14 bring it to us in a way that lets us work with them to get
15 solutions. I think we are actively and will continue to work
16 with them aggressively to get solutions to those kinds of
17 problems.

18 SENATOR ROMERO: Let me ask you, has this issue
19 ever been agendized for one of these monthly meetings? And if
20 so, what has been the reaction? What steps have been taken to
21 try to enhance safety of the employees?

22 MR. DAWSON: Safety of the employees is always on
23 the agenda in one way or another. Items range from things like,
24 in some of the cells, there are bolts that protrude slightly
25 from the wall. In the event of a physical activity, that can be
26 a risky thing to bump up against those, and so action needs to
27 be taken to basically file it down. Something as simple as
28 that.

1 Two, something much, much more complex. For
2 example, the use of pepper spray, which is a concern that we
3 have. The use of pepper spray in combination with multiple
4 anti-psychotic medications is something where research does not
5 show that this is something that we should readily do. So, we
6 extensively train our people in formal trainings of managing
7 assaultive behaviors. We ensure that they have access to
8 additional support staff when there's a risk of assaultive
9 behavior.

10 But in short, employee safety is always on the
11 agenda in one way or another. And we are not advantaged by
12 anybody getting hurt. We want to avoid that. We do what we can
13 to make that not happen.

14 SENATOR ROMERO: Thank you.

15 SENATOR JOHNSON: Further questions? Senator
16 Knight.

17 SENATOR KNIGHT: Are you suggesting that there is
18 a reaction between the pepper spray and the medication that the
19 inmates are taking?

20 MR. DAWSON: What I've been advised is that there
21 is the possibility of serious adverse effects that can occur as
22 a result of the interaction of those chemical agents, and that
23 we do not have research that says that that's a safe thing at
24 all to do; that we can have greater liability as a result of
25 doing it than not doing it.

26 SENATOR KNIGHT: Is it all medications that they
27 are receiving?

28 MR. DAWSON: No, no. We're primarily concerned

1 about the kinds of unusual anti-psychotic medications that are
2 given to --

3 SENATOR KNIGHT: Yes, but all of the psychotic
4 medications, they all fall under the same category?

5 MR. DAWSON: I'm not sure. We have a concern
6 that we don't know the answer to what the medical effects are of
7 those kinds of interactions. And until we do, we want to take
8 the conservative course and not introduce chemical agents when
9 it's not absolutely essential that they be introduced.

10 Our own staff, the medical technical assistants
11 on our staff, don't -- don't have the pepper spray. In the
12 event of an extreme situation, they can call upon the Department
13 of Corrections staff who do.

14 SENATOR JOHNSON: I have to share Senator
15 Knight's bewilderment.

16 I mean, someone who's engaged in a wild behavior,
17 or an assault, or something out here in Capital Park might well
18 be receiving the same kinds of drugs, the same kind of
19 medication.

20 Is every police department in the country running
21 the risk of some interaction with drugs? I find it amazing that
22 there could be a debate or a discussion about that, particularly
23 when you're indicating the analysis is to prove a negative,
24 that somehow you want to be satisfied that there isn't a problem
25 as opposed to being satisfied that there is a problem that would
26 justify not using them.

27 This is not a monsterously important point to me,
28 but it's a source of some bewilderment. And if, as you say,

1 your paramount concern is the safety of employees, to deny them
2 the opportunity to defend themselves with those kinds of
3 devices, it just doesn't seem to make a whole lot of sense to
4 me.

5 MR. DAWSON: I appreciate that point, Senator
6 Johnson.

7 I think one of the things we do know, though, is
8 that the folks that we treat we know are on these kinds of
9 unusual anti-psychotic medications. It isn't a question of
10 knowing whether they're on the medications or not; we know they
11 are. So, it's not just a casual encounter with someone who
12 suddenly and inexplicably becomes violent.

13 We also, as I said, go to extensive lengths to
14 train our people on how to deal with assaultive behavior, and
15 the risk of assaultive behavior. And those people, in the event
16 of concerns, can be backed up by additional staff.

17 So, it's basically a question of a strong -- of
18 a chemical agent like that being used in a hospital setting.

19 SENATOR JOHNSON: While we're on the subject, in
20 all those facilities at the state, not just in conjunction with
21 the prison, what are the reporting procedures for assaults and
22 crimes in general committed? What kinds of records are kept of
23 that? Is there mandatory reporting of those? How does that
24 work?

25 MR. DAWSON: Absolutely. We keep track of those
26 kinds of incidents very rigorously. And if any of them rise to
27 any kind of a level of seriousness at all, they're documented.

28 SENATOR JOHNSON: Do you keep records of

1 comparisons of facilities? Are there certain facilities that
2 have higher incidence of that kind of problem?

3 MR. DAWSON: We do keep records at each of our
4 facilities and comparisons can be made. I off-hand do not know
5 the differences between the facilities at this time.

6 SENATOR JOHNSON: Wouldn't such a comparison,
7 such an analysis, be useful in trying to determine if, in fact,
8 it showed that certain facilities had a much higher incidence of
9 those kinds of behaviors?

10 MR. DAWSON: If I may, suffice to say what we're
11 trying to do is reduce the incidence of those kinds of
12 incidents.

13 SENATOR JOHNSON: I understand.

14 The question is, if there are dramatic
15 differences among facilities, it would seem to me that that
16 would be very useful from a managerial point of view to say,
17 look, is there something we're doing different at this facility
18 as opposed to this facility that results in the disparity?

19 MR. DAWSON: Yes, it would.

20 SENATOR JOHNSON: Thank you.

21 Witnesses in support, please.

22 SENATOR KNIGHT: Mr. Chairman.

23 SENATOR JOHNSON: Senator Knight.

24 SENATOR KNIGHT: It just seems ridiculous to me
25 as well.

26 Has there ever been a case of any reaction to
27 pepper spray on anybody who is taking medication that we know
28 of?

1 MR. DAWSON: I honestly don't know the answer to
2 that question, since it's not our practice to use it.

3 SENATOR JOHNSON: Senator Romero.

4 SENATOR ROMERO: Just on this point again, too.

5 You've talked about the training, but the assault
6 rates do not appear to be going down. Would you be willing
7 review the training, take another look at it, and to make some
8 appropriate recommendations as to what is effective and should
9 be continued, as well as possibly what might be changed? Would
10 you be willing to take a look at that?

11 MR. DAWSON: Of course.

12 SENATOR ROMERO: Thank you. And then if you
13 would share that with the Committee, that would be interesting.

14 SENATOR JOHNSON: Witnesses in opposition.

15 MS. HEUSEL: First of all, I want to say that
16 I'm not opposing the confirmation.

17 SENATOR JOHNSON: Would you introduce yourself
18 for the record, please?

19 MS. HEUSEL: Debra Heusel. I'm from the
20 California Correctional Peace Officers Association. I'm the
21 Legislative Chair.

22 I'm not opposing this confirmation. However, I
23 have some concerns for our members' safety at DMH, the Vacaville
24 facility that we were speaking of earlier, and the assault
25 rates.

26 And just to share some information, the assault
27 rates at DMH are five times higher than that of the
28 institution. So, they're quite a bit higher.

1 The MTAs have nothing to protect themselves,
2 unlike the correctional officers have batons, although we
3 wouldn't speak of patients and batons, but they also have pepper
4 spray. The MTAs have nothing.

5 We've had 13 MTAs that have been forced to
6 medically retire since 1997 due to the injuries they've received
7 as a result of these assaults. And we are still waiting for DMH
8 to come forward with a resolution to this.

9 And I want to thank you for your time.

10 SENATOR JOHNSON: I'd like to ask you a question.

11 Are you aware of any information that would
12 indicate that there is a negative interaction among these
13 anti-psychotic drugs, or between these anti-psychotic drugs and
14 pepper spray, as an example?

15 MS. HEUSEL: No, and I know of no studies that
16 show such information.

17 SENATOR JOHNSON: Thank you.

18 Would you care to wrap up, sir, or respond in any
19 way? That's the way my wife does it.

20 [Laughter.]

21 SENATOR JOHNSON: You can be funny.

22 MR. DAWSON: I think that would be ill-advised
23 just now, to be funny.

24 Only that I personally feel absolutely committed
25 to do what I can to reduce the probability that any of our staff
26 members will be injured on the job. I feel strongly about that.

27 I've committed to looking at the rates of
28 assaultive behaviors and to bring the resources of our

1 organization together to consider what additional
2 recommendations we might have. I think you'll find that I will
3 follow through on that.

4 SENATOR JOHNSON: I think that you're seeing that
5 on a bipartisan basis there's concern over those issues.

6 MR. DAWSON: I see that.

7 SENATOR JOHNSON: What's the pleasure of the
8 Committee?

9 SENATOR KARNETT: Move it.

10 SENATOR JOHNSON: Do you have any family members
11 that you'd care to introduce, sir?

12 MR. DAWSON: Senator Johnson, I do.

13 Members of the Committee, I would like to
14 introduce my wife of 40 years and my partner in life, and the
15 woman who has all ready said that she'll be my valentine next
16 week, my wife, Linda Dawson.

17 SENATOR JOHNSON: Secretary, call the roll.

18 SECRETARY WEBB: Senator Karnette.

19 SENATOR KARNETTE: Aye.

20 SECRETARY WEBB: Karnette Aye. Senator Knight.

21 SENATOR KNIGHT: Aye.

22 SECRETARY WEBB: Knight Aye. Senator Romero.

23 SENATOR ROMERO: Aye.

24 SECRETARY WEBB: Romero Aye. Senator Johnson.

25 SENATOR JOHNSON: Aye.

26 SECRETARY WEBB: Johnson Aye. Four to zero.

27 SENATOR JOHNSON: Congratulations.

28 MR. DAWSON: Thank you.

1 SENATOR JOHNSON: Raynor Tsuneyoshi, Director of
2 Boating and Waterways.

3 Welcome, sir.

4 MR. TSUNEYOSHI: Good afternoon, Senator Johnson
5 and Members of the Rules Committee.

6 Thank you for the opportunity to say a few words
7 in support of my confirmation as Director of Boating and
8 Waterways Department. It's a capacity in which I've served
9 since my appointment by Governor Davis on March 7th of last
10 year.

11 Before I begin, do you have any questions or
12 anything?

13 SENATOR JOHNSON: No, go ahead with your
14 statement. That'll be fine. You'll probably inspire us with a
15 few thoughtful questions.

16 MR. TSUNEYOSHI: I'll try.

17 The mission of the Department is to provide safe
18 and convenient public access to California's waterways and
19 leadership in promoting in public's right to safe, enjoyable,
20 and environmentally sound recreational boating.

21 I'm sort of a boater myself, as I happen to be an
22 avid fisherman and try to get out on the water as often as I
23 can.

24 I've also worked in the maritime industry for
25 many, many years, and was employed by the U.S. Federal Maritime
26 Commission as counsel to one of the Commissioners for five
27 years.

28 In the ten months that I have been with Boating

1 and Waterways, we've won a lawsuit over our water hyacinth
2 control program in Sacramento-San Joaquin Delta, and resumed
3 this program and started a new program in the Delta to control
4 another non-native invasive weed called Egeria densa. Both of
5 these weeds, if left unchecked, create safety hazards for
6 boaters. They block navigational channels. They block up
7 marinas, and clog agricultural irrigation systems.

8 We also have provided \$50 million in loans and
9 grants in overseeing projects to develop and improve marinas and
10 boat launching facilities. Among other things, we also have
11 instituted a program for some of the lakes to have these
12 floating restrooms. If you've ever been on a boat on one of
13 these lakes --

14 SENATOR JOHNSON: I've used them on a number of
15 occasions.

16 MR. TSUNEYOSHI: Okay.

17 SENATOR JOHNSON: They've proven to be very
18 handy, I might add.

19 [Laughter.]

20 MR. TSUNEYOSHI: I've heard that from many
21 grateful boaters.

22 We've also provided \$10 million in beach erosion
23 control projects for California's naturally eroding coastline.
24 And I might add that in putting sand on the beaches, it's like a
25 people attractant and generates an estimated \$11 billion in
26 revenue to the state.

27 The Department is facing a number of different
28 challenges in the years ahead. One of the areas is the

1 environment. With the challenges that we're being faced with, a
2 hiring freeze and things like that, what we've tried to do is
3 establish a task force of members within our department who deal
4 with the problems as far as the environment are concerned that
5 affect our department.

6 There are a myriad of environmental boating
7 issues facing the Department, among which are vessel sewage,
8 abandoned vessels, plastic pollution, recycling, and high
9 emission two-stroke engines, the latter of which has partially
10 been resolved by California Air Resources Board's order to build
11 cleaner engines, and that seems to be working.

12 Although we do not have statutory responsibility
13 for some of these issues, we believe it's incumbent upon us to
14 work with boaters, local agencies, and businesses to provide the
15 necessary information to address these concerns. We strongly
16 support continued funding for grant funding for the removal of
17 abandoned vessels that pose navigational and environmental
18 problems, and grant funding for local boating law enforcement
19 efforts.

20 I wish to note that our abatement program for
21 abandoned vessels is concerned with the removal of derelict
22 vessels and is not involved with floating homes. That was for
23 Senator Burton, who's not here.

24 Long-term for me goal is to try and reduce the
25 boating accident rate. Last year, 51 Californians died. And I
26 went over some of the statistics with our statistician. You
27 know, if 28 of those people who drowned had been wearing life
28 preservers, they'd be alive today. I hope by our educational

1 program that we can turn that around.

2 In addition to traditional boating activities,
3 such as sailing, fishing, canoeing, kayaking, and rafting,
4 there's a new generation of boaters who are wake boarding, water
5 skiing, and using personal watercraft that are called jet skis.
6 And the challenge is, how to reach these people with boating
7 safety education.

8 We will continue to use time-tested techniques to
9 reach the public, including a home study education course and
10 safety pamphlets, as well as media campaigns involving
11 billboards, print media, radio and television public service
12 announcements.

13 In addition, we will use the power of the
14 Internet to inform and partner with the University of California
15 and California University systems for the construction of
16 Boating Instruction Safety Centers which will provide on the
17 water and in the classroom boating safety education to the
18 public.

19 With the increasing number of boat owners in
20 California, there is a strong need for the Department to
21 continue to provide financial assistance for boating access
22 projects such as boat launching facilities and small craft
23 harbors.

24 That's the sum total of my statements, and I'd be
25 happy to answer any questions you may have.

26 SENATOR JOHNSON: You began, I believe, a
27 billboard campaign last year that had -- do you recall the
28 slogan? Something like drunken idiots --

1 MR. TSUNEYOSHI: Oh, yes, sir.

2 SENATOR JOHNSON: -- pretending to be boaters or
3 posing as boaters.

4 Would you tell us a little about that, and why it
5 was abandoned?

6 MR. TSUNEYOSHI: We conducted a series -- I
7 forget the name of these groups -- focus groups, thank you,
8 focus groups all over California. And basically --

9 SENATOR JOHNSON: Everyone up here is familiar
10 with focus groups.

11 [Laughter.]

12 MR. TSUNEYOSHI: I can see that.

13 You know, some of the questions we asked them
14 were, how do we get through to people? You know, we try to give
15 them encouraging messages. We try to give them objective
16 statements like, if you don't wear your lifejacket, you're going
17 to drown if you fall overboard. And it didn't seem to have any
18 effect on getting through to the boaters.

19 And one of the recommendations that came around
20 to us was, you need to kind of have a really strong, hit-them-
21 between-the-eyeballs statement. As a result, we came up with
22 two sayings that raised a lot of the controversy. And it
23 basically went: Beware of drunken idiots disguised as boaters;
24 or beware of drunken idiots disguised as fishermen.

25 I never got so many e-mails in my life about
26 people who took umbrage because the general term was -- the
27 general response was: I'm a responsible boater; I do not drink,
28 and I really feel insulted that you would include me in that

1 group.

2 And that was all the controversy.

3 SENATOR JOHNSON: I'm mystified by that. I don't
4 think your advertising campaign was including them.

5 MR. TSUNEYOSHI: No, it wasn't.

6 SENATOR JOHNSON: I mean, it was, in my mind,
7 making a distinction between irresponsible drunken idiots and
8 responsible boaters.

9 My question, I guess, is, you abandoned that very
10 quickly, and what did that cost?

11 MR. TSUNEYOSHI: Quite frankly, we were actually
12 at the end of the advertising cycle, the contract, and so those
13 posters were going to be cycled out anyway.

14 SENATOR JOHNSON: You went on with different
15 slogans; didn't you?

16 MR. TSUNEYOSHI: Yes, sir, right.

17 SENATOR JOHNSON: Other questions from Members of
18 the Committee? Senator Karnette.

19 SENATOR KARNETTE: This interests me. I wasn't
20 aware of that. I think I saw some.

21 But you said you went on with other slogans.
22 Have they been very effective? What were they?

23 MR. TSUNEYOSHI: You know, there's some like:
24 Human beings are not life preservers, they sink.

25 SENATOR KARNETTE: That's a pretty good one.

26 MR. TSUNEYOSHI: Or, boats have no brakes.

27 You know, what we tried to do was give them
28 one-shot slogans to kind of remind them of some of the things

1 that they have to deal with. And we tried to do that by
2 studying our constituency and trying to find out, like with
3 these focus groups, what it's going to take to get through to
4 them.

5 SENATOR KARNETTE: I think it's a real good
6 approach to things, though, to try to hit people where they can
7 feel something and relate to it.

8 I had a bill that I finally ended up working with
9 Assembly Member Susan Davis that had to do with educating
10 boaters. And you were saying trying to do more outreach for
11 educating boaters and jet skiers. And so many of them are such
12 young people.

13 Is there any way we can prevent the young -- I
14 don't want to prevent anybody from having a good time, but I
15 don't want them to die doing it. Is there any way that you're
16 looking at keeping the very young ones from risking their lives
17 on things like jet skis?

18 MR. TSUNEYOSHI: They're forbidden by law if
19 they're 14 years or younger to even get on one of those things
20 without an adult operating it.

21 We're working with all of the California
22 enforcement officers. And one of the most effective things
23 we've found, and we tried to share this amongst all of the
24 officers, is, if you catch them as they're getting into the
25 water, and you just tell them, you know, these are the kinds of
26 behaviors that we don't look very kindly upon, and if we see you
27 doing these things, like hot-dogging, or things like that, we
28 will cite you.

1 It's amazing how, by just kind of gently
2 reminding them before they get into the water that Big Brother's
3 watching, that it has --

4 SENATOR JOHNSON: That's an unfortunate choice of
5 words.

6 [Laughter.]

7 MR. TSUNEYOSHI: Scratch that.

8 SENATOR KARNETTE: But that works. If you think
9 somebody is watching you on the highway, it works too.

10 MR. TSUNEYOSHI: Anyway, you get my point.

11 SENATOR KARNETTE: So you're really working on
12 it, because that is a genuine and real concern that I had, and I
13 still do.

14 MR. TSUNEYOSHI: Yes, ma'am. We're also working
15 with the people who rent jet skis, because in many cases, these
16 people who rent them sometimes gave the renters the impression
17 it was like a motorcycle, and it isn't. It has no brakes. It
18 can't stop. And not only that, if you let off on the gas, you
19 lose steerage. You no longer have any control.

20 Most people, when they get into a panic
21 situation, the first thing they do is, they release the
22 throttle, and now they've lost steerage. Now they have no
23 control at all.

24 So, you know, we're trying to make sure that
25 those who rent them have some kind of an education thing before
26 the person gets on them, the PWC.

27 SENATOR KARNETTE: I have one other question.

28 I know that there have had to be some budget

1 cuts, I realize that.

2 MR. TSUNEYOSHI: Yes, ma'am.

3 SENATOR KARNETTE: What kind of rationale did you
4 feel compelled to use when you selected those cuts?

5 I know one of the things you commented on earlier
6 when I talked to you about it, when you were trying to spray to
7 get rid of this particular -- I've forgotten what the name of
8 the plant is.

9 MR. TSUNEYOSHI: Egeria densa.

10 SENATOR KARNETTE: The Egeria densa, and you had
11 to spend so much time doing things that really had nothing to do
12 with the spraying.

13 Is there any way, when you made cuts, did you
14 think about cutting some of that out, or is it possible?

15 MR. TSUNEYOSHI: It really isn't possible. In
16 fact, as I told you, as far as Egeria densa is concerned, it's
17 probably going to cost -- if it cost us four million dollars
18 last year, it's probably going to be somewhere between six and
19 seven million dollars next year to take care of.

20 What we did was, we had -- you know, at any given
21 time of the year, we have projects that are in the -- building
22 projects for boat ramps and marinas and things in the formative
23 stage where they're just talking concepts, and then they move to
24 the -- if it looks like it's something that's going to go, then
25 they come up with the actual drawings, and they start the
26 permitting process.

27 What we have had to do is stretch some of these
28 processes out so that, okay, the project for City A, maybe we'll

1 have to take you the next budget year, and things like that.

2 SENATOR KARNETTE: So, just postponing.

3 MR. TSUNEYOSHI: We're just kind of postponing
4 it. You know, it's about \$15 million worth that we've had to
5 kind of put off.

6 SENATOR KARNETTE: Well, if there's any way we
7 can help here in the Legislature with the Egeria densa, and so
8 the money that you spend really helps, I wish you'd let us know.

9 MR. TSUNEYOSHI: I most certainly will.

10 SENATOR JOHNSON: Any further questions.

11 Witnesses in support.

12 MR. BAKER: Mr. Chairman, Steve Baker with Aaron
13 Read and Associates, representing the Southern California Marine
14 Association in support.

15 We'd particularly like to thank the Director for
16 his willingness to expand recreational boating opportunities for
17 folks in California.

18 Encourage your confirmation.

19 SENATOR JOHNSON: Thank you, sir.

20 MR. KRAUSS: Mr. Chairman, Members, my name is
21 Bill Krauss, and we represent the Marina Recreation Association,
22 the California Association of Harbor Masters and Port Captains,
23 the California Marine Parks and Harbors Association, the Western
24 Boater Safety Group, the Northern California Marine Association,
25 and the California Marine Affairs and Navigations Conference.

26 Our organizations are essentially the breath of
27 boating industry. We represent private marina owners and
28 operators, public marina owner-operators, ports and harbors,

1 boat dealers, boatyards, yacht brokers, boating publications,
2 marine finance institutions. So, we pretty much cover the
3 industry.

4 When I polled the membership of these
5 organizations regarding the support for Mr. Tsuneyoshi, it was
6 an unqualified support across the board, and that's saying
7 something, given the diversity of this group. And I think that
8 speaks to his qualifications more than anything else.

9 They've had a year to work with Mr. Tsuneyoshi,
10 and they're very, very satisfied with his performance; expect
11 him to serve very well in this position, and have unqualified
12 support.

13 Thank you.

14 SENATOR JOHNSON: Thank you.

15 Additional witnesses in support.

16 MR. DESMOND: Good afternoon, Committee Members.
17 Jerry Desmond, Junior, representing Recreational Boaters of
18 California, 40,000 boating families that belong to 180 boating
19 and sailing clubs from throughout the state.

20 And when our board had its annual meeting, the 18
21 voluntary directors from throughout the state of California
22 unanimously voted to support the confirmation of Director
23 Tsuneyoshi.

24 In the past year that we've worked with him, it
25 has become very clear that he speaks for the efficient and
26 effective use of boating gas tax dollars for programs that will
27 address the critical needs of the boating community, including
28 environmental protection, effective education to lower the

1 incidences of deaths and injuries on the waterways, and to move
2 the program forward for the next generation.

3 So, we ask you to support -- we support the
4 confirmation.

5 Thank you.

6 SENATOR KARNETTE: Are you related to Gerald
7 Desmond, the one the bridge is named after?

8 MR. DESMOND: It's not my bridge.

9 [Laughter.]

10 MR. DESMOND: Actually not, no. We don't, but we
11 know that the Director's familiar with the bridge as well.

12 MR. TSUNEYOSHI: I asked him the same question.

13 SENATOR JOHNSON: All right. Any further
14 witnesses in support? Witnesses in opposition?

15 Sir, have you any family members here with you
16 today that you'd care to introduce?

17 MR. TSUNEYOSHI: I wish I did, but no. Thank
18 you.

19 SENATOR JOHNSON: Well, we're just as relieved
20 that you don't.

21 [Laughter.]

22 SENATOR KARNETTE: Move confirmation.

23 SENATOR JOHNSON: Secretary, call the roll.

24 SECRETARY WEBB: Senator Karnette.

25 SENATOR KARNETTE: Aye.

26 SECRETARY WEBB: Karnette Aye. Senator Knight.

27 SENATOR KNIGHT: Aye.

28 SECRETARY WEBB: Knight Aye. Senator Romero.

1 SENATOR ROMERO: Aye.

2 SECRETARY WEBB: Romero Aye. Senator Johnson.

3 SENATOR JOHNSON: Aye.

4 SECRETARY WEBB: Johnson Aye. Four to zero.

5 SENATOR JOHNSON: Congratulations, sir.

6 MR. TSUNEYOSHI: Thank you.

7 SENATOR JOHNSON: Stanton C. Hazelroth, Executive
8 Director, California Infrastructure and Economic Development
9 Bank.

10 Welcome, sir.

11 MR. HAZELROTH: Thank you, Mr. Chairman, Members
12 of the Rules Committee.

13 I'm Stan Hazelroth, and I have been appointed by
14 the Governor as his nominee for the Executive Director of the
15 Infrastructure Bank.

16 I'm very excited to have the opportunity to
17 appear here before you today and to have the opportunity to work
18 on making a contribution to rebuild the infrastructure in
19 California.

20 My background is varied. I've been involved in
21 the practice of law and finance, development, construction,
22 politics, and community service. And I saw the opportunity as I
23 sort of entered my second half century to become involved in
24 something that was exciting and utilized a lot of things,
25 experiences, that I've had in the past. So, I applied for this
26 position, and with your support, I'll continue to serve.

27 California's infrastructure has dual challenges,
28 as you know, of deferred maintenance and the growth that we see

1 in California today. It's a multi-billion dollar obligation,
2 and I think it requires creative action.

3 My goals for this year include to increase the
4 outreach among the communities around the state to help them
5 understand all the programs that the Infrastructure Bank has
6 available, and to help them through the process. I would like
7 to -- I've started to meet with various district staff, and city
8 managers, and other city officials throughout the state, and I'd
9 like to continue to do that in order to bring a greater
10 awareness of what we have available in terms of service.

11 Other specific things, this year we're working on
12 leveraging the State Water Resources Control Board's Clean Water
13 State Revolving Fund Program. That's even a bigger name than
14 the Infrastructure Bank. But that's a program that's funded by
15 mostly by the EPA and makes loans to local government for clean
16 water programs, waste water treatment. And the Infrastructure
17 Bank this year is working on leveraging that program to bring an
18 additional \$300 million available to loan for waste water
19 treatment facilities around the state.

20 We're also working on issuing a portion, the
21 first launch of commercial paper for approximately one billion
22 dollars that the Infrastructure Bank has been asked to finance
23 for the east span of the Oakland Bay Bridge. So, we intend to
24 issue a portion of that this year.

25 I would like to see us loan about \$100 million to
26 local governments throughout the state for a variety of
27 infrastructure programs under the revolving fund.

28 Also this year, we'll probably leverage the

1 Revolving Fund Program to bring another approximately \$150
2 million in investor money into the bank for use in making loans
3 for infrastructure around the state.

4 I would like to, hopefully, provide between
5 twenty and thirty million dollars in industrial development
6 bonds throughout California to finance qualified manufacturers
7 or processors, and then finally to provide, hopefully, five or
8 six hundred million in low-cost financing to nonprofit agencies
9 that serve a public purpose that qualify under the Internal
10 Revenue Code.

11 My overall goal is to hopefully bring between one
12 and two billion dollars to the fight to rebuild infrastructure
13 in California in financing this year. Over 90 percent of that
14 money, I believe, will come from the capital markets. And in
15 the future, I would like to explore additional ways to use this
16 broad statutory language that we have available to bring more
17 funding each year in the effort to build a solid foundation for
18 California.

19 I thank you very much for this opportunity.

20 SENATOR JOHNSON: Could you amplify on that? You
21 said 90 percent from capital markets?

22 MR. HAZELROTH: Yes. Most of --

23 SENATOR JOHNSON: Do you think we're held in
24 higher esteem than Argentina.

25 [Laughter.]

26 MR. HAZELROTH: Yes, sir, I believe so.

27 SENATOR JOHNSON: Could you amplify on that? Is
28 that realistic?

1 MR. HAZELROTH: Yes, all of the programs that we
2 run the through our conduit program utilize the revenue streams
3 of the particular programs financed as security for repayment of
4 the loan, so they're basically revenue bonds.

5 So, the investment community, you know, the bonds
6 will be rated, and the rating will be based upon the analysis of
7 the ability of the particular project to repay the loan. And
8 then many of them are secured by a letter of credit, or
9 something like that.

10 So, we have been successful in the past in being
11 able to raise money that way, and we have no reason to believe
12 that we won't be able to be in the future.

13 SENATOR JOHNSON: What kind of percentage have
14 you been raising from that up to now?

15 MR. HAZELROTH: The bulk of what we've done in
16 the past, what the Infrastructure Bank has done in the past
17 couple of years, about -- I think it's 138 million that we've
18 loaned has been from money originally appropriated from the
19 General Fund. The remainder, over I think it's a billion-one or
20 a billion-two, has been from the capital markets. So, it has
21 been a large percentage.

22 SENATOR JOHNSON: And how much money has gone out
23 the door as of now? Clearly you, got off originally to a very
24 slow start. Localities, for example, weren't applying and so
25 on. How much has gone out the door?

26 MR. HAZELROTH: From that revolving fund, from
27 the appropriation from the Legislature of \$200 million, 138
28 million has been committed. We have a couple hundred million

1 in the pipeline in that program, most of which will be financed
2 out of this leveraging that we'll do later this year.

3 SENATOR JOHNSON: In local government projects,
4 are problems developing with local government being able to come
5 up with their share?

6 MR. HAZELROTH: We're working -- we're normally
7 able to work with the local governments to identify a means of
8 repayment in a revenue stream that is satisfactory so that we
9 can make the loan. So far, we haven't had any problem in
10 putting these factors together, other than the obvious delay in
11 ramping up a project, because the funding really became
12 available, I believe, in the last year of the Wilson
13 administration, the first \$50 million, and then the next year,
14 425, and then the following year, 277 million was reverted.

15 But the program has been in existence from that
16 standpoint really for about a year-and-a-half.

17 There are 15 categories of loans we make for
18 streets, highways, sewer systems, a wide range of things. So,
19 getting sort of the infrastructure down to make these loans, the
20 mechanics, the loan documents and everything, has taken some
21 time. I think that now that that period, much of it is over,
22 that it should be faster.

23 SENATOR JOHNSON: Questions from Members?
24 Senator Knight.

25 SENATOR KNIGHT: Thank you, Mr. Chairman.

26 We spoke before about the bonds that you were
27 putting out. Do you have a number of the quantity of bonds that
28 you have put out, including a breakdown of how many are IDBs,

1 how many are other kinds of bonds?

2 MR. HAZELROTH: Yes, we can make that available.
3 We have lists of all that. I'd be glad to make that available.

4 SENATOR KNIGHT: Thank you.

5 SENATOR JOHNSON: Senator Karnette.

6 SENATOR KARNETTE: I'd like to kind of know the
7 relationship of the CIEDB to the Commission on Building the 21st
8 Century, and does it coincide with the California Economic
9 Strategy Plan? Are all of you working together, all these
10 different groups?

11 MR. HAZELROTH: The Commission for the 21st
12 Century has certainly undertaken to analyze, I think, the needs,
13 infrastructure needs, in California on a broad scale, and has
14 identified billions and billions of dollars of needs that will
15 come out of various state agencies from Caltrans to the
16 Infrastructure Bank.

17 The Infrastructure Bank will play a role in that,
18 but a specific role with respect to some of these needs for
19 local government and as a conduit issue. So, we play a part of
20 that, we'll fill a part of the needs that have been identified.

21 SENATOR KARNETTE: And also, how can you ensure
22 the projects that you invest in are just not simply taking
23 advantage of the lower interest rates, financing rates, that
24 would have done it anyway? These projects would have been done
25 anyway even without the Bank?

26 MR. HAZELROTH: Prior to my coming aboard, the
27 Board of Directors of the Infrastructure Bank established a
28 point system for analyzing them, and financial need is a portion

1 of the point system. You get points for various things in those
2 categories.

3 And we have recently recommended a minimum level
4 of points needed to obtain a loan. So, that will start to -- it
5 should start to ferret out some of those that would have other
6 opportunities.

7 SENATOR JOHNSON: Senator Romero.

8 SENATOR ROMERO: Thank you.

9 I understand that about 24 loans have been made
10 from the Infrastructure State Revolving Fund.

11 MR. HAZELROTH: Yes.

12 SENATOR ROMERO: Is there a median size of these
13 loans? What percentage have defaulted or been in arrears?

14 MR. HAZELROTH: The median size has dropped.
15 Based upon the initial appropriation that totaled 475 million,
16 we had a maximum loan size of \$20 million per applicant.

17 After the redirection of the 277 million, we
18 dropped it to a \$10 million maximum so that the average loan
19 size has been dropping. We have made several \$20 million loans
20 initially, but now we're seeing them even below a million
21 dollars. So, it's dropping. I'd say the average loan now is
22 probably in three or four million dollar category.

23 In terms of default, we haven't experienced
24 default yet.

25 SENATOR ROMERO: So not one has defaulted. What
26 about been in arrears?

27 MR. HAZELROTH: We have had one that -- I think
28 in one case, one that is probably a couple days late, but that's

1 the only thing we've experienced so far.

2 SENATOR JOHNSON: Witnesses in support.

3 Senator Knight for a question.

4 SENATOR KNIGHT: Thank you.

5 Just one more question. It comes to mind that
6 the Infrastructure Bank is financing police, parks, and
7 educational facilities. There are other mechanisms for funding
8 these facilities.

9 Are they using these for matching funds or what?

10 MR. HAZELROTH: Well, in most cases they are.
11 One of the categories in our point system is leveraging, which
12 gives them, each applicant, extra credit for having other
13 sources of income. So, we highly encourage our financing to be
14 a portion, or a small portion, of the remainder of the funds
15 that are made available either by the local government, or the
16 federal government, or whatever.

17 SENATOR KNIGHT: If they're supposed to be for
18 economic development --

19 MR. HAZELROTH: Yes.

20 SENATOR KNIGHT: -- can police facilities improve
21 the economy?

22 MR. HAZELROTH: Well, the statute specifically
23 mentions facilities, both police stations and fire stations, as
24 qualified projects under the law.

25 SENATOR KNIGHT: Specifically?

26 MR. HAZELROTH: Specifically mentions that
27 category. So, we have been receptive to that since it's in the
28 statute.

1 SENATOR JOHNSON: Witnesses in opposition?

2 Have you any family?

3 MR. HAZELROTH: Yes, sir, thank you.

4 My father, Ken; my wife, Therese, and my son,
5 Joe.

6 SENATOR JOHNSON: What's the pleasure of the
7 Committee?

8 SENATOR KARNETTE: Move the confirmation.

9 SENATOR JOHNSON: Moved by Senator Karnette.
10 Secretary, call the roll.

11 SECRETARY WEBB: Senator Karnette.

12 SENATOR KARNETTE: Aye.

13 SECRETARY WEBB: Karnette Aye. Senator Knight.

14 SENATOR KNIGHT: Aye.

15 SECRETARY WEBB: Knight Aye. Senator Romero.

16 SENATOR ROMERO: Aye.

17 SECRETARY WEBB: Romero Aye. Senator Johnson.

18 SENATOR JOHNSON: Aye.

19 SECRETARY WEBB: Johnson Aye. Four to zero.

20 SENATOR JOHNSON: Congratulations.

21 MR. HAZELROTH: Thank you very much.

22 [Thereupon this portion of the
23 Senate Rules Committee hearing
24 was terminated at approximately.

25 2:35 P.M.]

26 --ooOoo--
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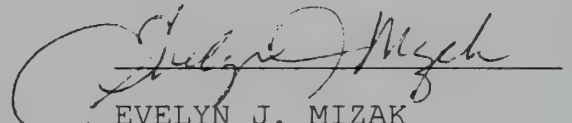
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SENATOR WILLIAM KNIGHT

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TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

REGINA BIRDSELL, Director
Consumer Advocacy Division
Public Utilities Commission

MIKE A. NISPEROS, JR., Chief Trial Counsel
California State Bar

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Governor's appointee today, Regina Birdsell, Director of the Consumer Advocacy Division of the PUC.

MS. BIRDSELL: Thank you for this opportunity to appear before you today.

I was appointed by Governor Davis last March. I've served since that time as the Director of the Office of Ratepayer Advocates. I've enjoyed this opportunity to work with a team of committed public servants.

CHAIRMAN BURTON: What was the date last March?

MS. BIRDSELL: March 21st.

CHAIRMAN BURTON: I was just trying to figure the drop dead date.

MS. BIRDSELL: Well, it did change my life.

ORA was created by the Legislature in 1985 to represent the interests of public utility customers throughout the state. It is our job to counter balance the interests of utilities with those of California ratepayers on issues before the PUC. The statute clearly identifies who our client is.

The mission of the Division is to serve as an independent voice and to advocate for safe and reliable service at the lowest cost. We're housed within the PUC, and that allows us unique discovery rights.

Our staff consists of attorneys, economists, engineers and accountants. They're experts in utility, electricity, natural gas, telecommunications, and water

1 regulations. Hopefully, ORA's analysis gives decision makers an
2 opportunity to weigh alternatives and to reach fully informed
3 decisions.

4 Our workload was expected to decrease as
5 regulation was supposed to be drawing to a close. In fact, more
6 consumer choice created the need for more complex reviews. Last
7 year alone we tracked over 160 energy-related bills, and 10
8 telecom bills. In addition, we reviewed over 1200 informal
9 filings made by the utilities before the PUC.

10 Since I arrived ten months ago, we have
11 successfully negotiated a \$160 million settlement as part of the
12 San Diego Gas and Electric MOU and filed complaints against Pac
13 Bell regarding service quality, marketing abuses and auto
14 redial.

15 My short-term goal was to realign the staff, to
16 improve accountability, clarify our focus to reflect current
17 industry standards, and to build persuasive consumer advocacy,
18 and to communicate better with our constituents and other
19 consumer advocacy groups. New technologies, dynamic market
20 conditions, and a wide range of consumer choices have developed
21 new sets of problems and concerns for customers throughout the
22 state. The staff is now positioned to coordinate work and
23 collaborate on relevant issues that support our mission.

24 My long-term goals are to present information to
25 the PUC, and serve as a resource for Legislators and consumer
26 groups whenever our analysis would add value.

27 I think ratepayers deserve to have ORA's
28 expertise applied more widely, and I'm committed to finding ways

1 to make our resources available as needed within the legislative
2 and regulatory process.

3 Looking ahead specifically, while the issues are
4 increasingly complicated, our priorities are clear. Consumers
5 want reliable service, fair terms, and straight talk. We will
6 focus our attention on persuasive, coherent, consumer advocacy
7 in areas such as customer treatment, resource planning, and rate
8 setting, while we will continue to rebuild our litigation teams
9 to improve our effectiveness in developing a record on behalf of
10 consumers.

11 For example, over the next 18 months, three major
12 energy utilities are seeking rate increases, and rigorous
13 review's underway. We will continue to focus our attention on
14 telecommunications service standards with an increased emphasis
15 on customer treatment and good value for the rates they pay. We
16 believe there is much room for improvement.

17 Finally, we will continue to advocate for energy
18 resource planning that provides reliable service at a fair cost.
19 There's much work to be done, and I thank you for your
20 consideration.

21 CHAIRMAN BURTON: Senator Johnson. Senator
22 Romero.

23 SENATOR ROMERO: No questions.

24 CHAIRMAN BURTON: Senator Knight.

25 SENATOR KNIGHT: No questions.

26 CHAIRMAN BURTON: Senator Karnette.

27 SENATOR KARNETTE: No questions.

28 CHAIRMAN BURTON: Do you have any family with you

1 here?

2 MS. BIRDSELL: No, I don't.

3 CHAIRMAN BURTON: Witnesses in support?
4 Witnesses in opposition?

5 Pleasure of the Committee?

6 SENATOR KARNETTE: Move it.

7 CHAIRMAN BURTON: Call the roll.

8 SECRETARY WEBB: Senator Karnette.

9 SENATOR KARNETTE: Aye.

10 SECRETARY WEBB: Karnette Aye. Senator Knight.

11 SENATOR KNIGHT: Aye.

12 SECRETARY WEBB: Knight Aye. Senator Romero.

13 SENATOR ROMERO: Aye.

14 SECRETARY WEBB: Romero Aye. Senator Johnson.

15 SENATOR JOHNSON: Aye.

16 SECRETARY WEBB: Johnson Aye. Senator Burton.

17 CHAIRMAN BURTON: Aye.

18 SECRETARY WEBB: Burton Aye. Five to zero.

19 CHAIRMAN BURTON: Congratulations.

20 MS. BIRDSELL: Thank you.

21 CHAIRMAN BURTON: State Bar appointee required
22 to appear, Mike Nisperos, Junior, Chief Counsel, California
23 State Bar.

24 MR. NISPEROS: Good afternoon, Mr. Chair, Members
25 of the Committee.

26 I come seeking your confirmation of the Board of
27 Governors' appointment of April the 2nd to the position of Chief
28 Trial Counsel to the State Bar. My mission there is to

1 revitalize the organization, develop a performance-based
2 management system, and to introduce a broad menu, full toolbox
3 of disciplinary alternatives.

4 I received the questions that were sent to me by
5 your office, sir. I have responded to them. I've also
6 submitted a list of short-term and long-term goals and
7 objectives.

8 CHAIRMAN BURTON: One of the problems is that the
9 Bar tends to take cases on first-come-first-serve, which means
10 maybe a minimal case would be dealt with whether you have a
11 serious case waiting in line.

12 Have you figured out how to deal with that?
13 Maybe deal with the more egregious problems first, letting the
14 more minor problems trail, so to speak?

15 MR. NISPEROS: Yes, sir. I intend to implement,
16 and have already begun the process, of a more refined priority
17 system of identifying the more egregious cases.

18 On January 1st, I started a new specialty
19 prosecution team for high profile, very serious cases. They
20 have already obtained three resignations since January 1st of
21 very serious bad actors.

22 Within the rest of the Trials Unit, I am going to
23 assign top priority, and that means move to the head of the
24 line, for those cases which involve the greatest threat to the
25 public. I intend to refine within the priority system the
26 particularly vulnerable victims, such as seniors and children.

27 I think I can address some of the lesser cases
28 with alternative dispute resolution. I have met with

1 representatives from San Francisco and from Los Angeles County
2 Bar.

3 I am putting together recommendations that I will
4 present to the Board of Governors to talk about dispositional
5 alternatives. We will also be working very closely with the
6 newly implemented Diversion Program and a drug court that the
7 State Bar Court is implementing. I think they will go hand in
8 hand with providing us alternatives for those cases that do not
9 warrant the most serious discipline.

10 CHAIRMAN BURTON: One of my concerns has always
11 been, it seems that the State Bar focuses on small firm and solo
12 practitioners, as I think we've seen with some of the
13 disclosures dealing with corporations, not necessarily their
14 lawyers, but all of a sudden, big firms seem to, like, do
15 nothing wrong, which I find fairly hard to believe. It seems
16 like you focus on easier targets and let the big boys go.

17 MR. NISPEROS: Sir, that will not be true in my
18 administration. There will be no bias of any kind.

19 I do believe that reviewing the data, as I looked
20 at the SB 143 report, the number of complaints received was
21 disproportionate against the solos and small firms.

22 I have met with the Executive Committee of the
23 Solo and Small Firms Section of the Bar at the last annual
24 meeting, and I've told them that we need to work together. I
25 want to develop an early warning system within my shop that can
26 divert those practitioners who are having problems.

27 Most often it's law office management not
28 returning phone calls, not doing the little things, and then

1 they develop into big complaints, and then they're processed.

2 We have an ethics school. We have a client
3 trust account school. I'd like to make broader use of those. In
4 fact, I'd like to spin them off into separate nonprofits, but I
5 won't do that unless the nonprofit entity can guarantee me that
6 they can do it for a lesser rate than is currently being
7 charged, equal to or lesser. The bids that I've received so far
8 have been at least one-and-a-half times the current rate, and
9 that would not be fair to them.

10 I share your concern. I'm absolutely convinced
11 that there's the same level of misconduct, just from a
12 statistical profile, that exists within the major corporations.
13 I think they have internal risk management mechanisms that come
14 into play, and therefore, those cases are never brought to
15 light. I think clients are paid off. I think agreements are
16 made at the golf course, and young attorneys are probably fired,
17 and I never find out about it.

18 I have told myself that this year, I would like
19 to see if the 10 major firms in California would give me a peek
20 inside their internal discipline systems so I could look at kind
21 of best practices review, to see if there are things that
22 they're doing that I should be doing, and also to get a sense to
23 answer the question, I think, that's raised by SB 143: Why is
24 there such a disproportionate number when one would expect that
25 misconduct would be across the board.

26 CHAIRMAN BURTON: One last question.

27 Explain to me the not returned phone call thing.
28 In other words, how long is it before a phone call isn't

1 returned that it's a problem? What kind of a phone call isn't
2 being returned?

3 What happens when clients, and especially, I
4 think, and I'm sort of familiar with it, with people who are
5 workers comp applicant attorneys, where the same client will
6 call 32 times with the same question and get 31 same answers,
7 and the 32nd time, other things happen and the person never gets
8 back to him.

9 How do you determine what kind of phone call is
10 it; why it wasn't returned; how long do they get to return it?

11 It always seems to me to be, if there is no
12 problem to the client, what would be the harm with not returning
13 a phone call?

14 MR. NISPEROS: I think before I came to this
15 position that it was viewed upon as a technical violation, a
16 violation of the rules of professional conduct, in that you have
17 a duty to communicate with your client, particularly when the
18 client initiates the communication.

19 CHAIRMAN BURTON: When what?

20 MR. NISPEROS: When the client initiates the
21 communication.

22 CHAIRMAN BURTON: So you're not returning a call.

23 MR. NISPEROS: Yes, sir.

24 CHAIRMAN BURTON: How long do you have to return
25 the call?

26 MR. NISPEROS: I think a reasonable period is 24
27 to 48 hours.

28 I think what we find, Senator, is that there are

1 solo practitioners working with an answering phone. They may be
2 in trial; they may be out doing a deposition. They're busy.
3 They're working hard.

4 And I had those same useless phone calls coming
5 to my office whenever I tried to be a solo practitioner.

6 And the clients get angry whenever you have to
7 bill them for those hours, but you should bill them for those
8 hours because you're occupying the attorney's time.

9 Usually it's an excuse for other things that are
10 going on, is what I think that I'm finding. That is not a case
11 that should be a discipline case. That's a case that I would
12 want to refer to a mediation process, and if the parties can't
13 reach agreement to continue a professional relationship, then go
14 their separate ways.

15 CHAIRMAN BURTON: What are you saying?

16 MR. NISPEROS: I'm saying that we have never had
17 a viable mediation program. That's what I'm talking about in
18 terms of alternative dispute resolution.

19 CHAIRMAN BURTON: For missed phone calls?

20 MR. NISPEROS: For missed phone calls or anything
21 in which somebody is calling my office and saying that they want
22 to complain about an attorney.

23 Our typical initial response is to contact the
24 attorney and say, "We're getting these phone calls. Can you
25 take care of it?"

26 But if the complaints keep coming in --

27 CHAIRMAN BURTON: Okay.

28 Senator Johnson. Senator Romero. Senator

1 Knight.

2 SENATOR KNIGHT: No questions.

3 CHAIRMAN BURTON: Senator Karnette.

4 SENATOR KARNETTE: You mentioned the big firms,
5 and you said you were going to request that they allow you to
6 come into the firm to see if they're following correct
7 procedures.

8 Suppose they refuse to do that?

9 MR. NISPEROS: I didn't say that I would be there
10 to review their procedures for correctness. I would be there to
11 review their procedures to see if there's something I can learn
12 about the private disciplinary system and their risk management
13 approach.

14 They're certainly free to tell me no, you can't
15 come in; no, we don't want to talk you.

16 I hope to approach them in such a way that they
17 will understand I'm coming as a student, someone wanting to
18 learn and to have the information that I think is valuable, not
19 to any way jeopardize their malpractice insurance, or make them
20 vulnerable or liable in any way.

21 SENATOR KARNETTE: I have the same concern
22 Senator Burton expressed his bill, that the solo practitioners
23 are getting, you know, attention, while the big firms, they just
24 fire the young attorneys and take care of it themselves, which
25 is good, I suppose. I don't know if it is or not.

26 I think people tend to feel that the big firms
27 never make any errors, and they do.

28 MR. NISPEROS: Senator, if there is information

1 provided to me that forms the basis by which I may open a
2 complaint in the public interest against any attorney in any
3 position that I think is substantial enough to warrant
4 investigation and discipline, I will do it, regardless of what
5 their firm is.

6 SENATOR KARNETTE: Thanks.

7 MR. NISPEROS: Yes, ma'am.

8 CHAIRMAN BURTON: Do you have any family here?

9 MR. NISPEROS: Yes, sir, I do.

10 CHAIRMAN BURTON: Would you like to introduce
11 them.

12 MR. NISPEROS: Yes, sir, please.

13 Starting in the third row back, on the left is my
14 nephew, Keith Keyton. Immediately next to him is my sister,
15 Theda Nisperos. Next to my sister is an old friend of the
16 family, Deputy Sheriff Mike Vales. In the second row to the
17 far left is the Deputy Chief Trial Counsel from Los Angeles,
18 Bill Davis. Immediately next to him is my God daughter, Holly
19 Jenkins. Next to Holly is my niece, a first-year law student at
20 McGeorge, Melanie Buccat. And next to my niece is my daughter,
21 who has her application into law school as we speak.

22 And in the front row, I'm very delighted to
23 present my parents, Mike and Nell Nisperos.

24 CHAIRMAN BURTON: Witnesses in support?
25 Witnesses in opposition?

26 MR. NISPEROS: I beg your pardon, Mr. Chair.

27 I'd also like to introduce my very close friend,
28 the intergovernmental affairs representative for the City of

1 Oakland, Gilda Gonzales.

2 CHAIRMAN BURTON: Move the nomination.

3 SECRETARY WEBB: Senator Karnette.

4 SENATOR KARNETTE: Aye.

5 SECRETARY WEBB: Karnette Aye. Senator Knight.

6 SENATOR KNIGHT: Aye.

7 SECRETARY WEBB: Knight Aye. Senator Romero.

8 SENATOR ROMERO: Aye.

9 SECRETARY WEBB: Romero Aye. Senator Johnson.

10 SENATOR JOHNSON: Aye.

11 SECRETARY WEBB: Johnson Aye. Senator Burton.

12 CHAIRMAN BURTON: Aye.

13 SECRETARY WEBB: Burton Aye. Five to zero.

14 CHAIRMAN BURTON: Congratulations.

15 MR. NISPEROS: Thank you, sir.

16 [Thereupon this portion of the
17 Senate Rules Committee hearing
18 was terminated at approximately.

19 2:00 P.M.]

20 ---ooOoo---

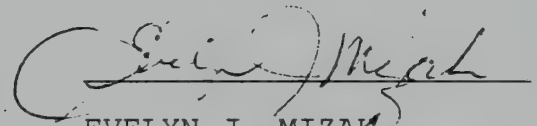
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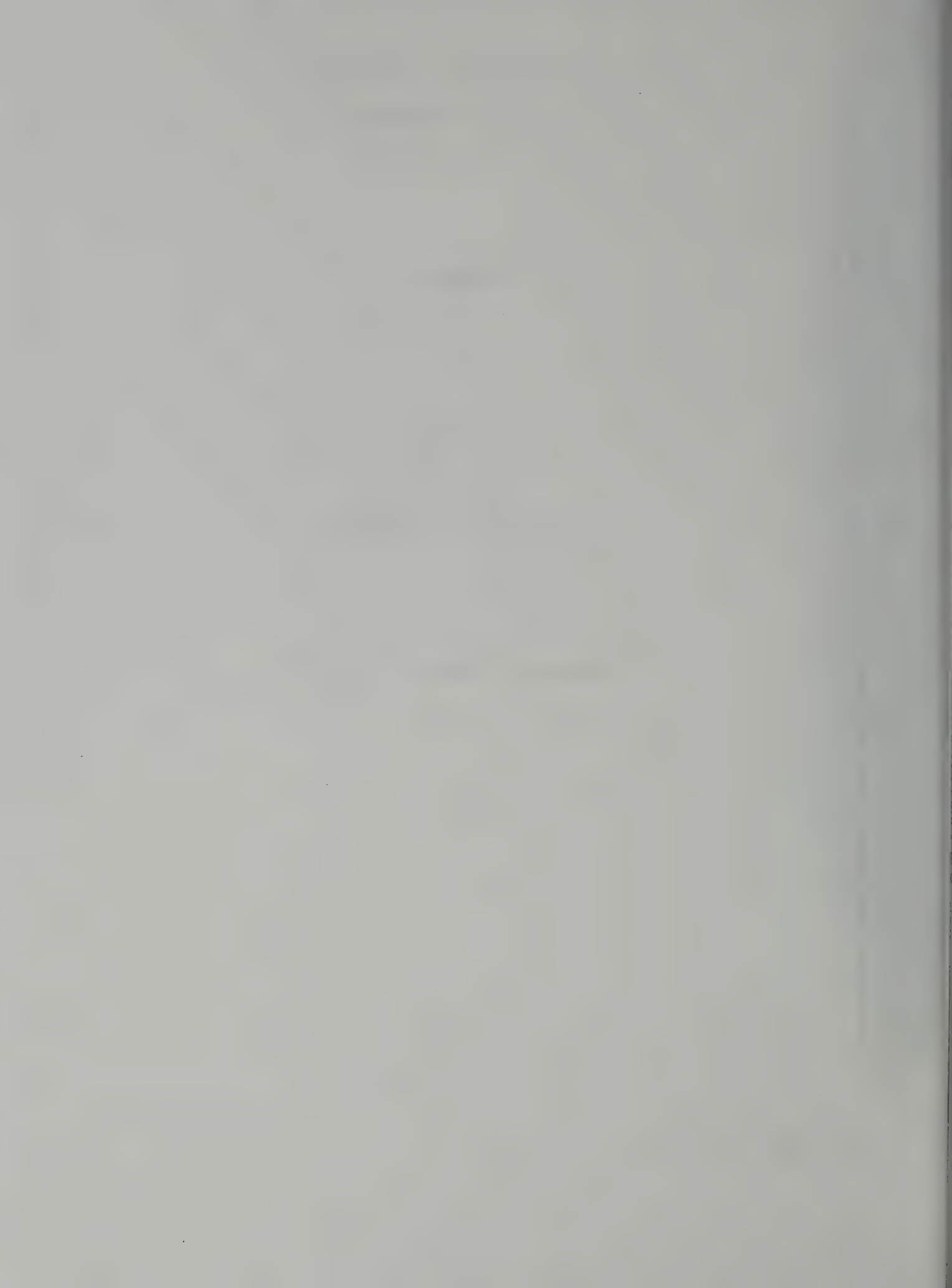
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RYAN SHERMAN, Consultant to SENATOR ROMERO

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California Gambling Control Commission

J.K. SASAKI, Member
California Gambling Control Commission

RICHARD D. KATZ, Member
State Water Resources Control Board

SENATOR BYRON SHER

CRAIG WILSON, Chief Counsel
State Water Resources Control Board

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: John F. Hensley, Member,
Gambling Control Commission.

MR. HENSLEY: Good afternoon, Mr. Chairman.

CHAIRMAN BURTON: All right.

On behalf of Mark Macarro, Chair of his tribe, he
can't be here publicly supporting the confirmations. He would
like to say that he feels communication between the tribes and
the Commission have greatly improved, and he hopes they'll
continue to get better.

MR. HENSLEY: Senators, I'm John Hensley, the
Chairman of the Gambling Control Commission. I've now been
there one-and-a-half years. It seems like five, but I've been
there one-and-a-half years.

My background is that of a federal agent for 29
years. The primary areas of expertise were the Bank Secrecy
Act, criminal investigations, and regulatory investigations.

I bring with me the experience of working at the
federal level at enforcing federal gambling regulations, and
working money laundering investigations in Nevada connected to
casinos and individuals trying to use casinos. So, I've had the
experience of casino enforcement, ships at sea, gambling ship
enforcement, and general federal law enforcement, and
specifically money laundering enforcement, along with the
management of up to 22,000 employees.

CHAIRMAN BURTON: Has anything bad happened since
you were confirmed?

1 MR. HENSLEY: No, Senator, there hasn't.

2 CHAIRMAN BURTON: Senator Johnson.

3 SENATOR JOHNSON: Thank you, Mr. Chairman. I
4 won't take but a moment, because obviously we've had an
5 opportunity to discuss your background with you before.

6 This is in no way, I emphasize, directed at you,
7 but just a question that I've asked many of the appointees. And
8 that is: What conversations did you have with the Governor, the
9 Governor's staff, about conflict of interest or potential
10 conflict of interest? Do you feel that you were adequately
11 apprised of what not only the letter of the law, but the spirit
12 of the law was with respect to conflicts and so on?

13 MR. HENSLEY: Yes. I'm very aware of the
14 conflicts, and been through actually a course with the FPPC, and
15 I've studiously stayed away from any conflicts.

16 SENATOR JOHNSON: The question really was
17 directed to any conversations you might have had prior to your
18 initial appointment. Let me just be very clear. This is a
19 question I've asked a great many appointees.

20 What I'm really after is, is the Governor's
21 office aggressively with their appointees discussing with them,
22 in advance, the need to be mindful not only of the letter of the
23 law, but the spirit of the law with respect to conflicts of
24 interest?

25 MR. HENSLEY: The simple answer is yes.

26 SENATOR JOHNSON: You did have such
27 conversations?

28 MR. HENSLEY: Yes, I did.

1 SENATOR JOHNSON: Before you were appointed?

2 MR. HENSLEY: Yes.

3 SENATOR JOHNSON: Thank you.

4 And you're now getting along with the Indians.

5 MR. HENSLEY: Yes.

6 CHAIRMAN BURTON: Senator Knight. Senator
7 Karnette.

8 SENATOR KARNETTE: I have one comment or
9 question.

10 I wonder what role you play with implementing
11 Hertzberg's AB 471 that had to do with Internet and phone
12 betting on horse races. What do you do with that issue?

13 MR. HENSLEY: At present, we have no role.
14 That's the Horse Racing Board. We have not had any role in that
15 legislation.

16 SENATOR KARNETTE: So, it's your understanding
17 that you won't have then?

18 MR. HENSLEY: At the present time we have been
19 told it's not ours to enforce. That could change, of course,
20 with the Legislature, but at the present, we don't have a role,
21 as I understand it.

22 SENATOR KARNETTE: Thank you.

23 CHAIRMAN BURTON: Senator Romero.

24 SENATOR ROMERO: No questions.

25 CHAIRMAN BURTON: Senator Johnson moves.
26 Do you have witnesses here in support?

27 MR. HENSLEY: I brought no witnesses,
28 Mr. Chairman.

1 CHAIRMAN BURTON: Any family here?
2 MR. HENSLEY: No.
3 CHAIRMAN BURTON: Witnesses in opposition?
4 Senator Johnson moves the nomination. Call the
5 roll.
6 SECRETARY WEBB: Senator Karnette.
7 SENATOR KARNETTE: Aye.
8 SECRETARY WEBB: Karnette Aye. Senator Knight.
9 SENATOR KNIGHT: Aye.
10 SECRETARY WEBB: Knight Aye. Senator Romero.
11 SENATOR ROMERO: Aye.
12 SECRETARY WEBB: Romero Aye. Senator Johnson.
13 SENATOR JOHNSON: Aye.
14 SECRETARY WEBB: Johnson Aye. Senator Burton.
15 CHAIRMAN BURTON: Aye.
16 SECRETARY WEBB: Burton Aye. Five to zero.
17 CHAIRMAN BURTON: Congratulations.
18 MR. HENSLEY: Thank you.
19 CHAIRMAN BURTON: J.K. Sasaki.
20 MS. SASAKI: Hello.
21 CHAIRMAN BURTON: Did anything bad happen since
22 you were confirmed?
23 MS. SASAKI: No. Basically good things have been
24 going on. We've been progressing quite well, working with all
25 of our constituents.
26 CHAIRMAN BURTON: Questions, Senator Johnson?
27 SENATOR JOHNSON: I'll take a moment to ask the
28 same question. Again, it's not picking on you. As the

Governor's representative sitting out here in the front row knows, I quite frequently ask these questions with respect to what communications did you have with the Governor or the Governor's staff with respect to the potential conflicts of interest, and ensuring that you can comply not only with the letter but the spirit of the law in terms of any conflicts of interest that might be there, or appearance of conflicts of interest.

MS. SASAKI: Yes, we were instructed to view the conflicts video, which we did judiciously, and actually noted it with our coordinator, conflicts coordinator, Lisa King, and we have followed it, and the Form 700s, definitely I filed that.

SENATOR JOHNSON: That speaks to the letter of the law.

So, you've had forms explained to you, and what your reporting obligations are.

But what about the spirit of the law and the underlying purpose of the law to avoid the possibility of a conflict of interest, or the possibility of the appearance of a conflict of interest?

MS. SASAKI: Yes, I have.

SENATOR JOHNSON: That's what my question is directed to.

MS. SASAKI: Yes.

SENATOR JOHNSON: And again, I'm not picking on you.

MS. SASAKI: No, I understand.

Yes, I have been. One reason I was selected is,

1 I was told that I was trusted by the Governor.

2 And the conflicts, and as far as the conflicts,
3 yes.

4 SENATOR JOHNSON: If there's an answer to my
5 question in there, I didn't hear it. Maybe I need to rephrase
6 the question.

7 What kinds of communications did you have with
8 either the Governor or the Governor's representatives about,
9 again, not just the letter of the law, you've got to fill out
10 these forms by this date, but the spirit of the law in terms of
11 potential conflicts of interest? Did anybody talk to you about
12 that?

13 MS. SASAKI: Yes, certainly.

14 SENATOR JOHNSON: Or did they just say, we trust
15 you?

16 MS. SASAKI: No, they trusted me in the fact that
17 I would not have any conflicts, especially like with any
18 gambling conflicts, any stocks, or anything. That was
19 definitely pointed out to me really good from the Governor's
20 office, if that's what you're speaking about with conflicts.

21 SENATOR JOHNSON: Mr. Chairman, no further
22 questions.

23 CHAIRMAN BURTON: Senator Romero.

24 SENATOR ROMERO: No questions.

25 CHAIRMAN BURTON: Senator Knight. Senator
26 Karnette.

27 SENATOR KARNETTE: I have one, related to race
28 tracks again.

1 This one, I'd like to know if you've taken any
2 action since your appointment to regulate card rooms in race
3 tracks? I'm interested in race tracks and card rooms.

4 MS. SASAKI: Have we taken any action? Yes, we
5 worked on some regulations for the card rooms.

6 Race tracks we do not handle, but card rooms, we
7 have done a few proposition player regulations. We had a
8 meeting with many of the card room representatives.

9 SENATOR KARNETTE: Because there's been some
10 discussion, card rooms, you know, Indians versus the ones that
11 are non-Indians.

12 But you have talked about it?

13 MS. SASAKI: Yes.

14 CHAIRMAN BURTON: Do you have family here with
15 you?

16 MS. SASAKI: Yes, I do. I have my mother, Mrs.
17 Sasaki, and my husband, Al Fabyancic, and my nephew, Jeffrey
18 Sasaki.

19 CHAIRMAN BURTON: Witnesses in support?
20 Witnesses in opposition?

21 Hearing none, move the nomination. Call the
22 roll.

23 SECRETARY WEBB: Senator Karnette.

24 SENATOR KARNETTE: Aye.

25 SECRETARY WEBB: Karnette Aye. Senator Knight.

26 SENATOR KNIGHT: Aye.

27 SECRETARY WEBB: Knight Aye. Senator Romero.

28 SENATOR ROMERO: Aye.

1 SECRETARY WEBB: Romero Aye. Senator Johnson.

2 SENATOR JOHNSON: Aye.

3 SECRETARY WEBB: Johnson Aye. Senator Burton.

4 CHAIRMAN BURTON: Aye.

5 SECRETARY WEBB: Burton Aye. Five to zero.

6 CHAIRMAN BURTON: Thank you.

7 MS. SASAKI: Thank you.

8 CHAIRMAN BURTON: The State Water Control Board,
9 Richard Katz.

10 SENATOR SHER: Mr. Chairman, with your permission
11 I'd like to say a few words to introduce to you someone I think
12 all of you probably know, my former colleague in the State
13 Assembly and my good friend, Richard Katz.

14 Richard assured me that I wouldn't do any damage
15 either to himself or to me by saying a few words on his behalf,
16 and I hope that's the case.

17 Richard and I were elected to the State Assembly
18 in the same year, 1980. And we served nearly 16 years together
19 in the State Assembly, so I believe I know him in that context
20 as well as anyone. During that time, we both served on the
21 Assembly Environmental Safety and Toxics Material Committee, and
22 we worked closely on issues affecting water quality, water
23 resources, and other matters within the jurisdiction of the
24 State Water Resources Control Board.

25 As an Assembly Member, Richard authored landmark
26 water quality legislation, such as the Toxic Pits Act, which was
27 the first law of its kind to address groundwater contamination
28 from sumps, pits, and other surface impoundments.

1 He was also the author of California's first law
2 to institute the novel concept of water marketing to ensure more
3 efficient use of water resources in the state, and to lower
4 costs to urban water users.

5 Richard was also instrumental in working to
6 defeat legislation which would have undermined our state's water
7 quality protection laws, including the 1984 executive
8 reorganization plan, which really weakened the so-called non-
9 degradation policy under the Porter-Cologne Act.

10 In my view, the State Water Board has problems
11 that need to be addressed. It's an agency which has had some
12 serious policy and fiscal problems over the past decade or so,
13 largely because California water problems have become
14 increasingly complex.

15 I'm confident that Richard will lead the effort
16 to make the Board more responsive to its charter to protect
17 water quality under the Porter-Cologne Act, and given his
18 experience and his depth of knowledge of the issues, and his
19 commitment and tenacity, he will make an outstanding member of
20 the States Water Resources Control Board.

21 CHAIRMAN BURTON: Thank you, Senator Sher.
22 Richard.

23 MR. KATZ: Senator, Members, thank you.

24 First, Senator Sher, thank you very much.

25 Members, I appreciate the opportunity to appear
26 before you this afternoon. I am looking forward to answering
27 any questions you may have.

28 As you know, I have served on the Water Board for

1 approximately just under a year at this point. In that time,
2 have undertaken to work with the new majority on the Board as we
3 try and resolve many of the issues that Senator Sher alluded to.
4 At the same time, we're administering the Prop. 13 funds, trying
5 put those out in as expeditious and careful a manner as
6 possible.

7 At the same time, we are focused on a lot of
8 water issues around California and really trying to get ahead of
9 some of these problems focusing on recycled water, as well as
10 our various responsibilities to address various permits, and the
11 decisions of regional boards that may come before us.

12 I would happy to answer any of your questions.

13 CHAIRMAN BURTON: In the area of timber
14 harvesting and water quality, the regional board's got a right
15 to ask the State Board to appeal on timber harvest plans. The
16 North Coast Board has made six requests. None of them have been
17 granted.

18 Do you have any idea why the state would not
19 grant appeals on these issues when the regional board asks for
20 them?

21 MR. KATZ: Actually, the last appeal by the
22 regional board we took up, without taking the appeal up directly
23 from the Executive Officer, we took up the Pacific Lumber issue,
24 and as a result of that, imposed the most significant
25 groundwater monitoring ever imposed in a timber harvest area.
26 We have expanded that monitoring program, and for the first
27 time, put rules in place to ensure water quality.

28 I do not know why they were not picked up before

1 I was on the Board, but I do know that --

2 CHAIRMAN BURTON: Is that the only one?

3 MR. KATZ: There's been only one since I've been
4 on the Board.

5 In addition to that, we just remanded back to the
6 regional board at their request an attempt to get additional
7 water quality permits in a similar area, while working very
8 closely with the regional board on those permits.

9 CHAIRMAN BURTON: Has the Board got a quorum?

10 MR. KATZ: Yes.

11 CHAIRMAN BURTON: How long?

12 MR. KATZ: Well, it's always had a quorum. There
13 was three on the Board, and I replaced --

14 CHAIRMAN BURTON: How many people on the Board?

15 MR. KATZ: Five people on the Board. We're two
16 short.

17 CHAIRMAN BURTON: That's the wrong question.

18 If it's two-to-one, what happens? In other
19 words, do you need a constitutional majority or just those
20 present?

21 MR. KATZ: You need a majority to pass. So
22 far --

23 CHAIRMAN BURTON: A majority like two-to-one or
24 three-to-zip?

25 MR. KATZ: Let me check.

26 MR. WILSON [FROM THE AUDIENCE]: Two-one on most
27 issues.

28 MR. KATZ: Craig Wilson, with the Office of

1 General Counsel from the Water Board.

2 CHAIRMAN BURTON: So, a minority of the Board can
3 do something. In other words, two out of five is a minority, I
4 think, yeah.

5 MR. KATZ: The answer's yes, Senator.

6 CHAIRMAN BURTON: Afterwards, we may want to --
7 it seems kind of bizarre. You can't pass a bill that way. The
8 Supreme Court can't hear something without five votes.

9 This happened before your time, but any reason
10 why the State Board or the regional boards don't really pay
11 attention to the cumulative impact of timber harvest plans? In
12 other words, like she's going to harvest; well, that's kind of
13 all right. And they take each one individually and don't take
14 into effect what the cumulative nature is?

15 MR. KATZ: I think the Board -- frankly, I think
16 the Board should have. I don't know why they didn't.

17 I do know that the historic damage that's been
18 done there is one of the things we are grappling with. How are
19 you fair to a current operator and a current permit, and look at
20 the historic damage that's been done, and try and make sure that
21 what you do takes that into account, because the buildup could
22 cause a problem with even less effort now because of what's been
23 ignored.

24 That's what we tried to address in the decision
25 we just sent back to the regional board, to work with them on
26 getting the ancient problems addressed that have been unlooked
27 for so long.

28 CHAIRMAN BURTON: If you're dealing with

1 cumulative impact, which I'm more familiar with planning and
2 traffic, you know, the new person who's coming in with something
3 has to bear the burden of all the cars that went before.

4 MR. KATZ: Right.

5 CHAIRMAN BURTON: Getting to MTBE, I have know
6 idea what the Governor's thinking of or not thinking of.

7 There was a bill to require the phase-out. He
8 talked Senator Perata into not carrying the bill, that he was
9 going to do it by administrative act, and now he's going to, if
10 you can believe what people say or what's in the paper, may
11 extend the deadline on his administrative act.

12 A lot of the water districts, the groundwater
13 people in the northern part of the district I have are very
14 concerned.

15 What adverse water quality impact would happen if
16 we keep doing the MTBE, which was going to clean the air and
17 then poison water?

18 MR. KATZ: The Water Board is sponsoring
19 legislation this year that's designed to, first of all, address
20 one of the things that's been overlooked in previous legislation
21 having to do with vapor releases from underground storage tanks,
22 to try to get ahead of that problem.

23 The vast majority of the MTBE has all ready --
24 that's leaked has all ready leaked before the ten years to
25 upgrade the tanks was up in 1999, before all the recent
26 remediation. So, the vast majority of what's going to go has
27 all ready gone.

28 CHAIRMAN BURTON: This is a question to which I

1 do not know the answer, but if the exhaust from the vehicles
2 have the MTBE, and it goes up and comes down, I mean, we're not
3 talking about stuff that was stored before. We're talking about
4 new stuff, I would guess pollutants, that end up coming down. I
5 would assume that's the problem; isn't it?

6 MR. KATZ: The vapors I'm talking about, Senator,
7 are vapors that occur around the underground tanks themselves in
8 the ground and leak out of gaskets or seals that are not air
9 tight.

10 Because you double-tank something doesn't
11 necessarily make the container air tight.

12 CHAIRMAN BURTON: So the only MTBE problem is in
13 the gas stations that have gas with MTBE in them?

14 MR. KATZ: Well, the gas stations. You still
15 have underground tanks that have some.

16 The two-stroke engines were banned, as you know,
17 which was a major source at Lake Tahoe and other surface water
18 bodies.

19 CHAIRMAN BURTON: Is it a major source or the
20 total source? I know it was the major source, but did that,
21 like, eliminate it? There's still MTBE getting into the water,
22 as well as MTBE getting in the gasoline.

23 I know the banning of the two-stroke engine, did
24 that solve it, or did that just took a big piece out of it, but
25 there's still other stuff going on? I don't know.

26 MR. KATZ: My understanding is, it took a big
27 piece out. There is no more going in the surface that I'm aware
28 of because of the two-stroke ban.

1 There still are some leaky stations. We're still
2 finding stations that leak. We have a very aggressive --

3 CHAIRMAN BURTON: So, the only problem with MTBE
4 is the leaking --

5 MR. KATZ: Of underground tanks, I believe so.

6 CHAIRMAN BURTON: It doesn't have to do with
7 anything else, so basically, if every gas station, or whatever
8 it was, had an unleakable tank, you could still have MTBE
9 because it wouldn't be a problem?

10 MR. KATZ: Theoretically, assuming you could make
11 leak-proof tanks, yes.

12 CHAIRMAN BURTON: So, banning MTBE in gasoline is
13 beneficial because no gasoline with MTBE would go into a tank
14 that's leaking?

15 MR. KATZ: Correct.

16 CHAIRMAN BURTON: The Prop. 13 money, you know,
17 the cost of the Machado Water Act of whatever, provided funds
18 for water-related projects: recycling, conservation, supply and
19 reliability. Water districts, including, unfortunately, several
20 that I have to go down and talk to tonight, have applied for
21 funds to clean up -- all politics being local -- applied for
22 funds to clean up septic systems and other things.

23 Where's the funds? It seems like there's a delay
24 in getting stuff out.

25 MR. KATZ: We're getting stuff out as fast as
26 possible.

27 Let me tell you part of the situation. There are
28 currently, for instance, 214 projects that have applied,

1 equaling about \$148 million. We currently have in this year \$18
2 million to spend on that particular program.

3 So, there's a huge need out there, and we are
4 meeting it.

5 There is a huge need out there, as I said.
6 There's 214 projects, 148 million, and we have 18 million this
7 year from the bond measure.

8 CHAIRMAN BURTON: How much was in the bond
9 measure for this stuff?

10 MR. KATZ: The bond measure --

11 CHAIRMAN BURTON: It was 1.9.

12 MR. KATZ: -- is broken down. For instance, in
13 the Phase Two that's going up this year, there's \$82 million, 10
14 million comes off the top for CALFED and nonpoint source
15 pollution.

16 CHAIRMAN BURTON: There's only so much for this
17 program.

18 MR. KATZ: Correct, and in that program where
19 there's \$18 million, we have \$148 million worth of applications.

20 CHAIRMAN BURTON: How do you determine? Is it
21 first in, first out? How do you determine?

22 MR. KATZ: There's a rating system that comes
23 from the regional boards and the State Board from a technical
24 standpoint, and they rate all the projects on the basis of the
25 need, what they're cleaning up, what they're fixing, what
26 resources are available, what it'll take to get the job done.
27 It's a very complex rating system that is locally driven. And
28 then, we take a statewide look at it.

1 And the Board in the past, the Water Board,
2 hasn't moved projects around. We've left it to that rating
3 system and tried to keep it pretty meritorious.

4 CHAIRMAN BURTON: Lastly, on the nonpoint source
5 pollution, what's happening with the management of that as
6 required by the Alpert bill? Do you know what the
7 accomplishments have been to date on non-source pollution,
8 Alpert's bill 227?

9 MR. KATZ: On nonpoint pollution, we are in the
10 process of -- the regional boards are approving a variety of
11 plans having to do with trash TMDLs and storm water. They come
12 from the regional board to the State Board when they're
13 appealed.

14 We just last week dealt with the nonpoint
15 pollution in Los Angeles, and we'll be looking at others around
16 the region.

17 Senator, I actually can't give you a more
18 specific answer. I'll get back to you.

19 CHAIRMAN BURTON: All right.

20 I want to get back to this, the vacancies on the
21 Board. I want to fully understand it.

22 So, it takes two people. Two people can do
23 something, or two people cannot do something.

24 If you have a meeting, and somebody's not around,
25 there is no quorum, there is no meeting, there's no action.

26 What we have found with the Board of Forestry
27 is, the best thing in the world for the timber industry is not
28 to have a full board because they don't do anything, so the

1 industry keeps doing everything they want to do, for good or for
2 bad.

3 On the Water Board, which is a very important
4 board, it would seem to me, one, do you have any idea why the
5 Governor hasn't filled this? It sounds like a hell of a job to
6 me, a hundred grand a year.

7 I was asking him. Do you have any idea?

8 MR. WILSON: No.

9 CHAIRMAN BURTON: What is the rule that says two
10 people out of a five-member board can actually take action?

11 MR. WILSON: For the record, my name is Craig
12 Wilson. I'm the Chief Counsel of the Water Board.

13 CHAIRMAN BURTON: How long have you been in that
14 position.

15 MR. WILSON: Two years as Chief Counsel, sir.

16 CHAIRMAN BURTON: Were you with the Board long
17 before that?

18 MR. WILSON: Yes, I've been employed by the Board
19 for about 25 years.

20 CHAIRMAN BURTON: Fine, so you've got a history.

21 MR. WILSON: Yes.

22 The quorum requirement really stems from the
23 Legislature. I believe it's Water Code Section 183 specifically
24 states that in most cases, a majority of a quorum is what's
25 required to take action.

26 There is a major exception to that in water right
27 matters.

28 SENATOR JOHNSON: Just on that point.

1 All three of the current members have to show up
2 before any business of any type can be transacted; is that
3 correct?

4 MR. WILSON: You're correct.

5 SENATOR JOHNSON: Then some actions can be taken
6 on the basis of a two-to-one vote, or a two-to-nothing vote if a
7 member were to recuse himself for whatever reason?

8 MR. WILSON: Correct.

9 The major exception, and again, it's written
10 specifically into the Water Code, where you have a water right
11 proceeding, where you've held an evidentiary hearing, you do
12 need all three. You need three votes to adopt that.

13 CHAIRMAN BURTON: You need a constitutional
14 majority.

15 MR. WILSON: Yes.

16 SENATOR JOHNSON: I know it might be unfair to
17 this nominee, but you know, maybe the best way to ensure that
18 the other two appointments are made is to hold off on an
19 appointment.

20 CHAIRMAN BURTON: I'd have to agree, that'd be
21 really unfair to the nominee.

22 [Laughter.]

23 MR. KATZ: Thank you, Senator Burton.

24 CHAIRMAN BURTON: I'm of the opinion that we look
25 at all the boards in the budget. Those that aren't filled up --

26 SENATOR JOHNSON: If it's not important enough to
27 have a full complement, then maybe it's not important enough to
28 be funded.

1 CHAIRMAN BURTON: This isn't like the Board of
2 Forestry, where you probably get, you know, a hundred dollars a
3 day and meet in Scotia. I mean, this is a fairly good
4 appointment, it would seem to me. And vacancies have been
5 almost a year now.

6 I guess it's, you know, when you have a change
7 in administration.

8 Everybody now has been a Davis appointee?

9 MR. KATZ: Yes.

10 CHAIRMAN BURTON: Because on some boards, you
11 have holdovers, so basically you have three people who have a
12 whole different philosophy. And you could have had these
13 appeals from the regional boards, and you got two people that
14 are leftover from God knows who saying, "We really don't care if
15 they're polluting the river," and nothing happens.

16 Where, if you had a full complement, conceivably,
17 you could have a three-to-two vote in favor of cleaner rivers or
18 not. Okay.

19 Questions, Senator Johnson. I'll be right back.

20 SENATOR JOHNSON: Mr. Katz, let me start off with
21 the same kinds of questions I asked the others. And this is not
22 picking on you.

23 MR. KATZ: I understand.

24 SENATOR JOHNSON: Although, I have to say that
25 there's some danger in going third because I've had an
26 opportunity to look over your application form in the meantime.

27 The first question is with respect to what kinds
28 of communications you had prior to the appointment from either

1 the Governor or members of the Governor's staff talking to you
2 about the responsibilities in terms of conflict of interest, not
3 only the letter of the law, but the spirit of the law as well?

4 MR. KATZ: I had conversations, extensive
5 conversations with the Governor and the Governor's staff about
6 the appointment, and specifically with lawyers for the Governor
7 about the conflict of interest provisions in the Water Code,
8 since in some areas it's tough than other codes, about both the
9 letter of the law and the intent of the law.

10 And also with General Counsel from the Water
11 Board on my first day there, we had an extensive briefing on
12 conflicts of interest in the Water Code.

13 SENATOR JOHNSON: I said that it's a little
14 unfair coming up third because I've had a chance to look at some
15 things.

16 Could you explain to me about Cadiz? You had a
17 consulting contract with Cadiz?

18 MR. KATZ: Yes.

19 SENATOR JOHNSON: And that was terminated at some
20 point.

21 MR. KATZ: It was terminated the day before I
22 accepted this job. I was a consultant for them for about a
23 year-and-a-half.

24 SENATOR JOHNSON: And you continued to be an
25 owner of stock in that?

26 MR. KATZ: Minor owner, yes. It's not doing very
27 well, either.

28 SENATOR JOHNSON: What is it that they do?

1 MR. KATZ: They do farming and water.

2 SENATOR JOHNSON: Does this represent anything
3 that could, any of the issues that they're involved conceivably
4 come before you?

5 MR. KATZ: No, they don't have a waste discharge
6 permit, so they don't fall under the Board. They are involved
7 in no water issues before the Board. They have not been before
8 the Board before.

9 SENATOR JOHNSON: Not seeking any permits from a
10 local regional board --

11 MR. KATZ: No.

12 SENATOR JOHNSON: -- that might in some fashion
13 come before you in terms of appeal?

14 MR. KATZ: No, Senator.

15 SENATOR JOHNSON: Then the other one that I
16 noticed as I was killing time here was --

17 MR. KATZ: I knew I should have tried to go
18 first.

19 [Laughter.]

20 SENATOR JOHNSON: Lyondell?

21 MR. KATZ: Lyondell Chemical Company. I did some
22 consulting work for them two years ago.

23 SENATOR JOHNSON: Are these the same folks with
24 the MTBE, following up on the conversation with the Pro Tem?

25 MR. KATZ: They do make MTBE, but I've not done
26 any work for them for over two years.

27 SENATOR JOHNSON: What about this Alan Hilburg?

28 MR. KATZ: Alan Hilburg and Associates does

1 crisis communications. I worked for him on -- initially he was
2 part of the Lyondell effort. I've worked for him on other
3 clients since then.

4 SENATOR JOHNSON: Does that firm continue to
5 represent Lyondell?

6 MR. KATZ: No, they don't. And I don't do any
7 work for them at this point.

8 Actually, the work I did with them last year had
9 to do with the World Wrestling Federation.

10 SENATOR JOHNSON: Is that right?

11 MR. KATZ: It's an eclectic list.

12 SENATOR JOHNSON: I should say.

13 The University of California?

14 MR. KATZ: University of California did some
15 advising to them on energy issues.

16 SENATOR JOHNSON: May I ask what? I know you
17 were certainly involved in advising the Governor on energy
18 issues, the agreement --

19 MR. KATZ: With the renewables.

20 SENATOR JOHNSON: No, I was thinking that you had
21 done quite a bit. I seemed to have seen you around in hallways
22 when the issue of an Edison Company arrangement was being
23 discussed.

24 MR. KATZ: They were interested in co-generation
25 and some facilities like that. I helped them do some research
26 on that. I didn't do any lobbying for them or any work.

27 SENATOR JOHNSON: It was energy-related?

28 MR. KATZ: Yes.

1 SENATOR JOHNSON: You've received no compensation
2 for any other energy --

3 MR. KATZ: No, sir.

4 SENATOR JOHNSON: -- related work.

5 Well again, this is the result of going third
6 here. I think that's all I have.

7 MR. KATZ: Thank you, Senator.

8 CHAIRMAN BURTON: Senator Romero.

9 SENATOR ROMERO: Thanks.

10 As you know, the Department of Health Services
11 recently deregulated the disposal of low level radioactive
12 waste. This has some potential implications, of course, for
13 landfill operators and for the Water Board in terms of testing
14 of existing facilities for leachate, potential underground water
15 contamination.

16 What has been the response of the Water Board to
17 this particular regulation, and what ideas do you have, given
18 that it's been a very recent action? What ideas do you have to
19 educate and work with landfill operators with respect to this
20 new regulation and the concern over testing of potential
21 leachate?

22 MR. KATZ: As I understand it, Senator, and I
23 went back and did some checking after we had had our
24 conversation about that, that Health Services, in effect,
25 tightened up a reg, but it brought attention to something I
26 think many people hadn't been aware of, which was that low level
27 radioactive material could be disposed. They changed the
28 standard, I believe, from 100 millirams to 25 millirams.

1 SENATOR ROMERO: I'm saying that I don't believe
2 that that is the case, but we'll have an upcoming hearing to
3 fully --

4 MR. KATZ: Irrespective of that, let me tell you
5 what we've started since you and I had that conversation.
6 Because I think, like, as your staff mentioned, it caught most
7 of us by surprise, including members of our staff.

8 We've put out a letter that went out -- that is
9 going out today, based on that conversation, to all of the
10 regional water boards and letting them know of this change in
11 regulation, and asking them to examine what they do when they
12 issue waste discharge permits, to ask them to take a look at
13 what's coming into their areas today, and begin to gather the
14 information. We referenced them that there's legislation
15 pending, and that we want to start by assessing what's going on
16 out there right now.

17 We want them, first of all, to be aware of the
18 change in the regulation, and second of all, to assess how it
19 will impact on the various facilities in their area, what their
20 recommendations are to ensure the quality of the groundwater.

21 So, we are starting to get that word out.

22 SENATOR ROMERO: But the Board was not notified
23 by DHS?

24 MR. KATZ: Not that I'm aware of.

25 SENATOR ROMERO: And to date, at least right now,
26 until you and I had the conversation, there have been no plans
27 or actions to notify and to begin to work with the water
28 facilities?

1 MR. KATZ: As I said, once we learned of the
2 change, we immediately set out to reach out --

3 SENATOR ROMERO: When did you learn of the
4 change?

5 MR. KATZ: I learned of it when you and I had the
6 conversation about it, which was yesterday. And I don't believe
7 Health Services has notified others at this point.

8 SENATOR ROMERO: But you intend to, on the Board,
9 go ahead and make sure that this --

10 MR. KATZ: There's no question. We're not going
11 to wait. We will participate at the hearing at your request.
12 We will participate fully, but in the meantime, we are going out
13 on our own now, having had it brought to our attention, and find
14 out what's been going on locally to see.

15 Local regional water quality control boards have
16 the ability to prohibit that kind of disposal through their own
17 waste discharge permit requirements. We asked them to go back
18 and take a look at what they've currently permitted and what may
19 be out there so we know and get a handle on this before it
20 becomes a problem.

21 SENATOR ROMERO: Thank you.

22 CHAIRMAN BURTON: Colonel Knight.

23 SENATOR KNIGHT: Thank you, Mr. Chairman.

24 You've been on the Board for about a year now?

25 MR. KATZ: Yes.

26 SENATOR KNIGHT: And prior to that, you advised
27 the Governor? Are you the one that talked him into these
28 contracts?

1 MR. KATZ: No, Senator. He didn't ask my opinion
2 on that.

3 SENATOR KNIGHT: Okay.

4 Senator Sher talked about some policies that
5 should be changed. Are you aware of those policies, and what
6 are you going to do about them, and what are they?

7 MR. KATZ: One of the things we're trying to do,
8 and we hope to work with the Legislature on this year, is to
9 streamline some of the processes. For instance, if a regional
10 water quality control board has a basin plan amendment, and
11 they've passed that amendment, it comes to us for review after.
12 It's a very long process, but then it comes to us for review.

13 And we can review it, but if we disagree or find
14 a mistake, we can't do anything other than send it back to the
15 regional board, and they go through another whole hearing
16 process. And when it comes back to us a year later, we then
17 have the ability to make changes.

18 We're looking at trying to streamline some of
19 those procedures.

20 SENATOR KNIGHT: Yes, those are procedures rather
21 than basic policy of the Board. I wondered what policies were
22 going to be changed?

23 MR. KATZ: I think the Senator was referring -- I
24 think we're talking about procedures as opposed to policies. I
25 mean, if the Legislature changes the policy, obviously the Board
26 will implement it. We are not before the Legislature asking for
27 policy changes.

28 SENATOR KNIGHT: Thank you.

1 CHAIRMAN BURTON: Senator Karnette.

2 SENATOR KARNETTE: To follow-up on regional water
3 boards, we talked about this a bit, and Senator Knight mentioned
4 it, but when a regional water board disagrees with decisions and
5 they appeal to you, what's the procedure then?

6 MR. KATZ: Long. The regional board will make a
7 decision and --

8 SENATOR JOHNSON: Is it shorter because of the
9 lack of members?

10 MR. KATZ: No, Senator, not in that case. It
11 would make our workload better.

12 But when someone disagrees with a decision of a
13 regional board, they have the ability to petition the State
14 Board. And that petition has to meet certain criteria in order
15 for it to be accepted by the State Board.

16 Then the State Board will go through a hearing
17 process, and it's a public hearing process. And depending on
18 the kind of permit, it may involve an evidentiary hearing. We
19 may hold workshops around the issue in an attempt to resolve
20 some of the disputed issues. And then the State Board will make
21 a ruling.

22 In some cases, the State Board serves -- and I
23 don't believe I'm off base in using this analogy -- as sort of a
24 court of appeals from regional board decisions.

25 SENATOR KARNETTE: Now Los Angeles is one you're
26 looking at now; is that right? Wasn't there an appeal?

27 MR. KATZ: There was an appeal from L.A. on the
28 storm water -- I'm sorry, on the trash TMDL that the board

1 heard, I think, two weeks ago.

2 SENATOR KARNETTE: So, something like that will
3 go on a long time, are you saying?

4 MR. KATZ: Well, you know, people have been
5 working on the trash for actually, in some form or another, for
6 14 years in Los Angeles. And the regional board held extensive
7 hearings over the last year, plus we held several -- we held a
8 workshop on it and a pre-hearing conference on it, then held the
9 formal hearing on it, on the amendment to the basin plan. We
10 made recommendations that were then adopted in our order.

11 SENATOR KARNETTE: I may want to talk to you
12 later. If people come to talk to me, I can call you at any
13 time.

14 MR. KATZ: Sure.

15 SENATOR KARNETTE: By the way, if a Legislator
16 calls a person, there's some kind of a report. You have to
17 report it, don't you, or I do, or something, if I call and talk
18 to you?

19 MR. KATZ: No. We have some ex-parte rules that
20 apply to our process. We don't have reporting rules the way the
21 Coastal Commission does, but we do have some ex-parte rules that
22 prohibit conversations. For instance, once we're notified that
23 a petition's coming, or a petition has arrived, we're no
24 longer -- we're then subject to the ex-parte rules. We can't
25 have conversations with any of the parties unless all of the
26 parties are there and it's a public meeting.

27 SENATOR KARNETTE: Thank you.

28 CHAIRMAN BURTON: Would legislative inquiry be

1 considered as a party? Do you know?

2 MR. KATZ: I think it would be depending on where
3 it is in the process. Once we have --

4 CHAIRMAN BURTON: Somebody appeals. You take the
5 appeal. Senator Karnette calls and, I guess, basically she'd
6 say, "What's going on with this?"

7 MR. KATZ: I think we can respond procedurally.
8 I think Craig will be up pretty quickly if I get this wrong. We
9 can respond on procedure, but not on the matter itself. We can
10 answer questions relative to the procedure we're going through.

11 CHAIRMAN BURTON: Like where is it, and we're
12 doing this.

13 MR. KATZ: And what the timeline is.

14 CHAIRMAN BURTON: If a Member called and said,
15 "You know, these people are really good. Give them a break,"
16 that would be ex-parte?

17 MR. KATZ: Yes.

18 CHAIRMAN BURTON: Getting back to the membership
19 deal, I would assume from what I read in the paper that from
20 time to time you have discussions with the Governor?

21 MR. KATZ: Occasionally.

22 CHAIRMAN BURTON: Well, when you're dealing with
23 that office, do you deal with Susan, Lynn, or who.

24 MR. KATZ: Susan or Lynn.

25 CHAIRMAN BURTON: Well, I think you ought to make
26 it clear to them that we're not happy with lacks of full bodies
27 anyway. At least in my judgment, if you can't find somebody for
28 114, you're not going to find them for anything.

1 MR. KATZ: I understand.

2 CHAIRMAN BURTON: I think the Forestry Board, I
3 think that's one of the reasons the only people on that come
4 from the industry because it's a labor of love, you know, so to
5 speak.

6 Witnesses in support.

7 Are you here as a lobbyist, are you here as a
8 friend? What are you here as.

9 MS. MEDINA: As lobbyist.

10 Mr. Chairman and Members, Leslie Medina here on
11 behalf of the Metropolitan Water District.

12 We've known Richard for many, many years; have
13 had a positive working relationship with him. Feel he
14 understands the complex issues of water policy in California,
15 and would ask for your support on his confirmation.

16 MR. KANOUSE: Mr. Chairman, Members, Randy
17 Kanouse, East Bay Municipal Utility District, here as a
18 representative of East Bay MUD and as a friend of Mr. Katz.

19 I've worked with him for 21 years since he came
20 to the Legislature and served first on the Assembly Water
21 Committee. We support his confirmation.

22 I won't repeat the fine -- the statement by
23 Senator Sher that gave you a very clear indication of Mr. Katz's
24 accomplishments. I would simply add that in my dealings with
25 Mr. Katz over the years, he has always been a fair individual.
26 He has always been willing to meet with us, even when he
27 disagreed with us, even when his bills were measures that we
28 disagreed with. It's that sense of fairness that we believe is

1 very important in his role as a member of the Water Board,
2 serving in a quasi-judicial capacity.

3 CHAIRMAN BURTON: Thank you.

4 Witnesses in opposition?

5 Have you got family here?

6 MR. KATZ: No.

7 CHAIRMAN BURTON: Let me just add before we go to
8 a vote, and I was out during some of the questions, what is
9 your, with a small "r", role with the Governor's office on
10 issues other than water? I mean like on energy.

11 MR. KATZ: I have, at you know, last year I
12 assisted on the attempt to do the MOU, and I negotiated some of
13 the contracts on the renewable resources, not the long-term
14 ones, but the renewable resources in the spring time with
15 Edison.

16 When Nancy McFadden went out ill, they asked me
17 to help out part-time on some of the contracts. I'm trying to
18 do that just in her absence, and as soon as that's over, I'm
19 done.

20 CHAIRMAN BURTON: Help out in what way?

21 MR. KATZ: I'm sitting in some of the meetings
22 and trying to renegotiate some of the long-term contracts.

23 CHAIRMAN BURTON: It's got nothing to do with
24 this, but in other words, the Governor's office, the generators,
25 he's trying to get them to renegotiate?

26 MR. KATZ: Yes.

27 CHAIRMAN BURTON: How successful is he? Not
28 very.

1 MR. KATZ: There hasn't been a press release yet.

2 SENATOR JOHNSON: And certainly not a t.v. spot.

3 Just go back to it, because we've got the issue
4 of the two light on this board. I mean, it's a full-time board.
5 As the Chairman points out, \$114,000 a year.

6 From your conflict of interest statement, you
7 continue to operate a private consulting business. How much of
8 your time is involved in that?

9 MR. KATZ: At this point, minimal.

10 SENATOR JOHNSON: Richard Katz Consulting runs
11 itself?

12 MR. KATZ: No, Richard Katz Consulting has taken
13 a serious hit since I've been doing this, and will continue to
14 do so.

15 SENATOR JOHNSON: So, that requires just a very
16 minimal amount of your time.

17 MR. KATZ: Right.

18 SENATOR JOHNSON: Not that you planned it that
19 way; it just worked out that you don't have as many --

20 MR. KATZ: Volunteerism, you know.

21 SENATOR JOHNSON: But we're down two, yet the
22 Governor has asked you as a volunteer to spend time on other
23 projects. Am I hearing that right?

24 MR. KATZ: The Governor -- there was a problem
25 due to an illness, and I'm trying to help.

26 SENATOR JOHNSON: But apparently, then, it's
27 reasonable to conclude that the Governor doesn't regard the job
28 to which he appointed you as a full-time job.

1 MR. KATZ: Senator, I would disagree with that,
2 in that, as you know, and all of us who have been on one side or
3 the other of this table, we tend not to do any of this eight to
4 five or nine to six.

5 It is a long job and long hours. And much like
6 when I was in the Legislature, you know, you will find me at
7 night, working on things. You will find me on weekends, working
8 on things.

9 Friday, we're doing a meeting in L.A. where we're
10 trying to resolve an L.A. Regional Quality Control Board issue
11 with the Cayugas Water District.

12 In a couple of weeks, I'll been Holtville for the
13 beginning of the hearings on the IIC.

14 SENATOR JOHNSON: They say it's beautiful in
15 Holtville in the spring, because I've always wanted to go to
16 Holtville.

17 MR. KATZ: And on the San Diego-Imperial Water
18 District water trade, where we have set aside ten days for
19 hearings on that particular trade, so I will be doing it.

20 CHAIRMAN BURTON: This is more at him than you,
21 but isn't it safe to assume that Nancy McFadden's not going to
22 be back tomorrow?

23 MR. KATZ: Not tomorrow, but hopefully soon.

24 CHAIRMAN BURTON: Right, but there's going to be
25 a vacuum. Does he expect you to fulfill Nancy's role until she
26 returns? Has he got somebody else in mind?

27 MR. KATZ: Actually, I think Nancy takes great
28 pleasure of the fact that there are three of us who are doing

1 parts of what she used to do.

2 CHAIRMAN BURTON: Who are the other two?

3 MR. KATZ: Tom Hannigan's doing some additional
4 things. Nancy Sutley has come over from Cal EPA to pick up some
5 of the slack. It's being parceled out to other people. So, my
6 part of this is very specific and very limited in nature.

7 CHAIRMAN BURTON: Hannigan's doing additional
8 things?

9 MR. KATZ: Yes.

10 CHAIRMAN BURTON: Move the nomination. Call the
11 roll.

12 SECRETARY WEBB: Senator Karnette.

13 SENATOR KARNETTE: Aye.

14 SECRETARY WEBB: Karnette Aye. Senator Knight.

15 SENATOR KNIGHT: Aye.

16 SECRETARY WEBB: Knight Aye. Senator Romero.

17 SENATOR ROMERO: Aye.

18 SECRETARY WEBB: Romero Aye. Senator Johnson.

19 SENATOR JOHNSON: Aye.

20 SECRETARY WEBB: Johnson Aye. Senator Burton.

21 CHAIRMAN BURTON: Aye.

22 SECRETARY WEBB: Burton Aye. Five to zero.

23 CHAIRMAN BURTON: Congratulations, Richard.

24 MR. KATZ: Thank you, Senators.

25 [Thereupon this portion of the
26 Senate Rules Committee hearing
27 was terminated at approximately.

28 2:20 P.M.]

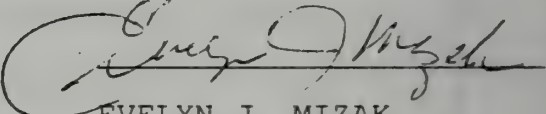
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

MEMBERS ABSENT

SENATOR ROSS JOHNSON, Vice Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

DAVID OROSCO, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

WILLIAM BIANCO, JR., Member
California Horse Racing Board

ROD BLONIEN
Thoroughbred Owners of California
Los Alamitos Race Course

RONALD LICCARDO
Pari-Mutual Employees Guild, Local 1280

ANTHONY GONSALVES
Oak Tree Racing and Del Mar Thoroughbred Club

1 CHRISTOPHER KORBY, Executive Director
2 California Authority of Racing Fairs

3 RICK BAEDEKER, President
4 Hollywood Park and Churchill Downs Companies

5 PARKE D. TERRY
6 Youbet.com

7 BOB FOX
8 California Thoroughbred Breeders Association
9 California Thoroughbred Trainers Association

10 PETER TUNNEY
11 Magna Entertainment Corporation

12 ROGER M. LICHT, Member
13 California Horse Racing Board

14 SENATOR EDWARD VINCENT

15 GEORGE MILLER
16 Television Games

17 DONALD G. FISHER, Member
18 State Board of Education

19 ASSEMBLY MEMBER CAROLE MIGDEN

20 KERRY MAZZONI, Secretary
21 Office of Education

22 ERIKA I. GONCALVES, Member
23 State Board of Education

24 JOE NUNEZ, Member
25 State Board of Education

26 LYNNE FAULKS
27 California Teachers Association

28 SUZANNE A. TACHENY, Ph.D., Member
State Board of Education

1 SENATOR DEDE ALPERT

2 LISA RAMER

3 CATESOL and Marin County Office of Education

4 CHRIS KAHN, Lobbyist

5 California Business Roundtable

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P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN BURTON: Governor's appointees appearing today, William Bianco, Horse Racing Board.

Go ahead, sir.

MR. BIANCO: My name is Bill Bianco. I was appointed by the Governor last year to sit on the Horse Racing Board. I have a two-year term.

I would like to say that I had a mission statement, but I don't know if everybody got a copy of it.

CHAIRMAN BURTON: It's made part of the record.

MR. BIANCO: Okay.

What I'd like to try to do is fulfill the quality of life to make it better for backstretch people. I know over the years, the last four or five years, it has improved. It hasn't improved to the standard that I'd like to see.

Number one, with the passing of the advanced deposit wagering, there was a couple of parts of the law that I'd like to make sure that, by the time I've completed my term on the Board, that we've fulfilled this. Right now, with the advanced deposit wagering, it's still relatively new. We've had some start-up problems, but they seem to be getting better.

Number two, the backstretch -- unionization of the backstretch people is starting is to -- the organizers are starting to meet with the participants. And basically, we are waiting for some of the organizers to present proposals. Some of trainers have gotten together and they want to do this as a unit. So, I think we have progress to report on that, too.

1 I would like to say that the staff that's been
2 assembled on the CHRB's Board today are hard working people.
3 There are a lot of people that are doers. I sit on some boards
4 where you don't get enough people to commit fully. And
5 basically, I find these people very professional, and we'll make
6 the horse racing industry a better industry.

7 CHAIRMAN BURTON: I've got two questions.

8 What's been the problem with organizing and
9 improving conditions in the backstretch?

10 MR. BIANCO: There really hasn't been a problem
11 of organizing. It just is very slow getting started, to be
12 frank with you.

13 The part of the law that, you know, goes into the
14 unionization, the organizers have been out. They've sort of
15 like laid out the ground rules, and they are meeting with the
16 personnel at the tracks now.

17 CHAIRMAN BURTON: And leaving the unionization
18 side, but trying to improve conditions in the backstretch,
19 what's been slowing that down, the tracks or what?

20 MR. BIANCO: No, I don't really believe it's been
21 slowed down. As for myself, it hasn't gone as fast as I'd like
22 to see it, because over the years, over the last two or three
23 years, there's been about four to six million dollars spent
24 improving the conditions, the living conditions, the health
25 conditions of the bathrooms, the shower facilities. There's a
26 lot that's already been done that I'd like to send you copies of
27 to show you that there's been a mass improvement.

28 CHAIRMAN BURTON: I'd just like to see some

1 improvement.

2 You're founder, Chairman, and of CEO of Kinetic?

3 MR. BIANCO: Yes.

4 CHAIRMAN BURTON: What did you do, you handed it
5 off to Shimmons?

6 MR. BIANCO: No, I sold it at the right time to
7 the right people.

8 CHAIRMAN BURTON: How did you get from the
9 plumbers to Kinetics?

10 MR. BIANCO: I happened to be in the right spot
11 at the right time.

12 CHAIRMAN BURTON: You do everything right; don't
13 you?

14 MR. BIANCO: There was a small company that I can
15 say that we happened to have four-garage buildings behind their
16 first facility. You probably never heard of it, a company called
17 Intel? And we actually rode with them --

18 CHAIRMAN BURTON: Unfortunately, a friend of mine
19 was in there very early. I say unfortunately because he didn't
20 take me along for the ride.

21 Questions, Senator Knight?

22 SENATOR KNIGHT: Thank you, Mr. Chairman.

23 I'm very interested in the racing business. I
24 had a hand in it at one time in my earlier years when I was
25 lighter and younger.

26 CHAIRMAN BURTON: You're kidding.

27 SENATOR KNIGHT: No.

28 CHAIRMAN BURTON: You rode?

1 SENATOR KNIGHT: Yes, I did, three races.

2 [Laughter.]

3 SENATOR KNIGHT: Well, anyway, I've seen the auto
4 racing industry, NASCAR, and the Indianapolis group now coming
5 up and developing.

6 I think the horse racing industry in California's
7 a significant economical boost to California. What are you
8 doing to promote it to make it more competitive with other
9 sports? We've got the Lottery now. We've got gambling
10 increasing in California. We've got to do something.

11 MR. BIANCO: Over the last couple of years, you
12 probably started to see advertising over the television, in the
13 newspapers.

14 We have not marketed the sport well.

15 SENATOR KNIGHT: No.

16 MR. BIANCO: And there's a big emphasis now to do
17 that.

18 As far as NASCAR, the amount of increase that
19 they've received in attendance is, you know, fantastic.

20 We have a sport, racing, that basically when we
21 have promotions where we have fairs on the inner track, right,
22 we get out family. It's a lot cheaper to go today to a horse
23 racing with a family and enjoy the outside, the outdoors, but
24 also it's a lot cheaper than going to a San Francisco Giant
25 game, a 49er game.

26 So, we have a sport. We just haven't marketed it
27 properly. And there's an awful lot of money being spent now.

28 SENATOR KNIGHT: Is the Board moving in that

1 direction? Do they have that as a goal?

2 MR. BIANCO: I think the people that are on the
3 Board itself have a goal to make it successful. By giving the
4 advanced deposit wagering, I believe that, you know, this time
5 next year, we are showing improvement. I don't have the
6 statistics in front of me because it's only been two months
7 since the bill -- the bill has gone into effect.

8 I hope I answered your question. We are
9 marketing now.

10 SENATOR KNIGHT: Good. That's what I want to
11 know.

12 MR. BIANCO: But what we need is dates where we
13 can count on you to come out and be -- I'll even ride with you,
14 the seniors riding.

15 [Laughter.]

16 CHAIRMAN BURTON: Senator Romero.

17 SENATOR ROMERO: Thank you.

18 Can you comment a little bit on the extensiveness
19 or seriousness of the use of illegal high performance drugs on
20 horses? What is the Board doing to address this.

21 MR. BIANCO: I think the Board has addressed it.
22 We have some medication in the State of California that has
23 been -- let me put it this way. The research and development by
24 the University of California at Davis has given us -- has
25 educated a lot of people.

26 I'll be very honest with you. When you keep
27 hearing things, to enhance the performance of a 1500-pound
28 horse, and it has one or two parts per billion of some type of

1 substance, it's hard for me to even, you know, fathom that this
2 could improve a horse's, you know, performance.

3 Some of the zero tolerance laws that we have and
4 in other states, they're starting to be modified a little bit.

5 What we do have in the State of California is an
6 awful lot of environmental issues now. What I mean by that, in
7 the San Joaquin Valley, where an awful lot of our alfalfa and
8 feed come from, there's wild poppy plants that grow. And the
9 wind in the valley, you know, actually sweeps this into the
10 grain itself.

11 So, we'll get somebody that's tested positive,
12 you know, one or two parts per billion range, right, and it's
13 probably an environmental issue.

14 Well, with the research that the UC Davis Maddy
15 labs is doing for us now, we have the data that we can present
16 to try to modify even some of our existing, you know, zero
17 tolerance laws.

18 SENATOR ROMERO: Thank you.

19 CHAIRMAN BURTON: Senator Karnette.

20 SENATOR KARNETTE: No questions.

21 CHAIRMAN BURTON: Do you have any family here
22 you'd like to introduce?

23 MR. BIANCO: No, my family, they were all here
24 the last time, but --

25 CHAIRMAN BURTON: They've seen us. Duly
26 unimpressed.

27 [Laughter.]

28 CHAIRMAN BURTON: Witnesses in support.

1 MR. BLONIEN: Mr. Chairman and Members, Rod
2 Blonien on behalf of Thoroughbred Owners of California, Los
3 Alamitos Race Course, in support.

4 MR. LICCARDO: I'm Ron Liccardo with the
5 Pari-Mutual Union of California. I represent all the clerks in
6 California.

7 Mr. Bianco has been a member of the Board that's
8 really been backing labor. He's concerned about, like he said,
9 the backstretch people. He's also concerned about the people on
10 the front side and about preserving jobs here in California.

11 We are in favor of Mr. Bianco's confirmation.
12 Thank you.

13 MR. GONSALVES: Anthony Gonsalves, representing
14 Oak Tree Racing and Del Mar Thoroughbred Club, in support.

15 MR. KORBY: Christopher Korby, California
16 Authority of Racing Fairs, speaking in support of Mr. Bianco's
17 confirmation.

18 MR. BAEDEKER: Rick Baedeker, President of
19 Hollywood Park and Churchill Downs Companies, speaking in
20 support of Mr. Bianco's confirmation.

21 MR. TERRY: Parke Terry, representing Youbet.com,
22 a Woodland Hills based internet company, also in support.

23 CHAIRMAN BURTON: You bet com?

24 MR. TERRY: Youbet.com.

25 CHAIRMAN BURTON: Did you guys have a position on
26 advance account wagering?

27 MR. TERRY: No, we were supporting it.

28 CHAIRMAN BURTON: You were supportive.

1 What does Youbet.com do?

2 MR. TERRY: Youbet.com is an internet advanced
3 deposit wagering company, again, based in Woodland Hills.

4 MR. FOX: Mr. Chairman, Bob Fox on behalf of the
5 California Thoroughbred Trainers and California Thoroughbred
6 Breeders Association, both in support.

7 MR. TUNNEY: Senator, I'm Peter Tunney, Members
8 of the Committee, representing Magma Entertainment Corporation.
9 We're here in support of the two candidates. We have a letter
10 on file.

11 Thank you.

12 CHAIRMAN BURTON: Witnesses in opposition.

13 Move the nomination. Call is the roll.

14 SECRETARY WEBB: Senator Karnette.

15 SENATOR KARNETTE: Aye.

16 SECRETARY WEBB: Karnette Aye. Senator Knight.

17 SENATOR KNIGHT: Aye.

18 SECRETARY WEBB: Knight Aye. Senator Romero.

19 SENATOR ROMERO: Aye.

20 SECRETARY WEBB: Romero Aye. Senator Burton.

21 CHAIRMAN BURTON: Aye.

22 SECRETARY WEBB: Burton Aye. Four to zero.

23 CHAIRMAN BURTON: Congratulations, Bill.

24 MR. BIANCO: Thank you.

25 CHAIRMAN BURTON: Roger Licht.

26 MR. LICHT: Good afternoon, Senators.

27 CHAIRMAN BURTON: Have a seat.

28 Senator.

1 SENATOR VINCENT: Thank you.

2 I just want to take this opportunity, and I
3 appreciate it, to give me an opportunity to present Mr. Licht to
4 this august body.

5 I'm very pleased and proud to have the
6 opportunity to express my support for Mr. Licht today because
7 his confirmation is very important to the racing industry as I
8 see it, and it's very important that he remain on the California
9 Horse Racing Board.

10 He is ideally suited for a number of reasons:
11 His experience as a horse owner which I really cherish; also,
12 he's been enthusiastically involved in horse racing as a fan;
13 and he has a certain amount of legal expertise. I think these
14 skills and knowledge make him uniquely qualified for our Horse
15 Racing Board for the State of California and the regulations
16 which we are now being involved in.

17 I've talked to many people at Hollywood Park,
18 Santa Anita, Del Mar, many of our county fairs, and Mr. Licht
19 has been given a good round of applause. I'd like to continue
20 to see that happen.

21 I think he's very important for our racing
22 industry, and I very strongly urge this board to confirm
23 Mr. Robert Licht to remain on the Board.

24 I thank you for opportunity.

25 MR. LICHT: Thank you.

26 Good afternoon. I'm Roger Licht. As you know, I
27 was appointed by Governor Davis about eleven months ago to the
28 Board. I enthusiastically sought that position because I felt I

1 could make a difference in the industry.

2 I believe in the eleven months that I've been on
3 the Board, I have made a difference. My peers have flattered me
4 by, in this short time, electing me as the Vice Chair of the
5 Board and as the Chairman of what is, if not the most important
6 committee, one of the most important, the Pari-Mutual Committee.
7 I feel very honored to have fulfilled those positions and to
8 hold those positions.

9 If confirmed, I will actively support the sport
10 that I love. And when I say sport, I emphasize that because I
11 believe that's what we need to do to market horse racing. It's
12 the sport that brings people out. There's a lot of forms of
13 gambling. Some of us agree with expanding gambling; others
14 don't. But whatever it is, I don't believe horse racing can
15 really compete on a gambling basis.

16 CHAIRMAN BURTON: What are some of the
17 differences you made?

18 MR. LICHT: I Chaired the Committee that put
19 forth the regulations for advanced deposit wagering. We
20 published them and had them approved in what I believe was an
21 incredibly short period of time. We received acclaim from the
22 industry as whole for having the outstanding set of regulations
23 in the country at the time. That's what my proudest achievement
24 is.

25 Number two, I'm very happy to say that I feel
26 that I am accessible to everybody in the industry, from the
27 fans, to the trainers, to the workers, to the owners. And I'm
28 always able to talk to people about what's going on in the

1 industry, and to try to help them resolve their problems.

2 My wife likes to say it's like I'm the manager of
3 an apartment building. People come up to me with every issue in
4 the world and say, what's wrong with horse racing and what can I
5 do to help it? And I never turn them down.

6 I've also worked on medication rules. I worked
7 on problem gambling issues. I've worked in virtually every area
8 that the Board deals with in my short time on the Board.

9 CHAIRMAN BURTON: Two things. What are the regs
10 on account wagering? I don't necessarily want chapter and
11 verse.

12 MR. LICHT: Okay. We have regulated the way
13 people can deal with account wagering, and what applicants have
14 to do to become licensed.

15 Let's start with the licensees, such as Youbet,
16 who -- you met their representative here today. They have had
17 to fulfill rigid requirements that we have put forth to make
18 sure that they are providing the proper service to the industry,
19 both to labor, both to the patron, and to make sure that
20 everybody's wagers will be secure.

21 As far as the regulations dealing with the
22 patron, we have put forward regulations that deal with -- for
23 instance, you can only make one deposit a day into your
24 account. This was a major issue brought forward to us by
25 experts in problem gambling.

26 CHAIRMAN BURTON: Any limit to the amount?

27 MR. LICHT: No limit on the amount.

28 CHAIRMAN BURTON: Well --

1 MR. LICHT: We discussed that in detail, Senator,
2 and what the problem gaming experts tell us is, whether it's a
3 small amount or a large amount, the problem gambling person, to
4 use a gambling term, chases and comes back. And that's when
5 people tend to really have a problem.

6 CHAIRMAN BURTON: Wouldn't it make sense to also
7 limit the amount in a day? I mean, if I can put five thousand
8 on my credit card for a day, unless I'm a total degenerate
9 gambler -- which at one time in my life I was -- I'm not going
10 to lose it in two races.

11 MR. LICHT: We discussed that in detail, and the
12 Board felt that it was not proper to restrict or --

13 CHAIRMAN BURTON: Why not?

14 MR. LICHT: Because everybody's economic base is
15 different. Five thousand dollars might be a problem for me, and
16 might not be for another person, while five dollars could be a
17 problem for some person. And we didn't feel we could regulate
18 deposits in that manner.

19 CHAIRMAN BURTON: How do you deal with the
20 problem gambling?

21 MR. LICHT: For one, we've required every
22 advertisement connected with ADW to have a referral to a problem
23 gambling place. We have -- the biggest thing is this chasing,
24 which is what we were advised, make sure that people only make
25 the one deposit a day.

26 We've asked all the tracks to include problem
27 gaming advertisements in all of their -- their programs and
28 other publications, and they've done that.

1 CHAIRMAN BURTON: Does the Youbet.coms of the
2 world, do they send out literature to people, or advertise to
3 people? How do they get their customers?

4 MR. LICHT: They advertise, yes, they do.

5 CHAIRMAN BURTON: Direct mail, too?

6 MR. LICHT: Yes, I believe they do do direct
7 mail.

8 CHAIRMAN BURTON: Are they required to put
9 something in there for problem gamblers?

10 MR. LICHT: All advertising is supposed to have a
11 problem gaming statement on it.

12 CHAIRMAN BURTON: Any length, any print size?

13 MR. LICHT: That's not in the regulations, no,
14 sir.

15 CHAIRMAN BURTON: They ought to maybe think about
16 that. I mean, if you have something like this, and then you get
17 way down to here, it tells you about problem gambling, you may
18 as well leave it out.

19 MR. LICHT: I agree.

20 CHAIRMAN BURTON: Because the problem with
21 problem gamblers is, they really don't know they have a problem
22 until some guy with the baseball bat comes looking for them for
23 a payment.

24 MR. LICHT: That's true.

25 CHAIRMAN BURTON: Senator Knight.

26 SENATOR KNIGHT: Thank you, Mr. Chairman.

27 Mr. Bianco talked about environmental issues
28 concerning drug testing, et cetera.

1 I have a friend, his horse won a race, and it was
2 contested. And it turned out that the trainer had changed the
3 feed a few days before because that particular feed brand name
4 that he was using was not available. So, he changed to the
5 other feed, which was supposedly the same mixture.

6 But it turned out that there was a coffee in
7 there that turned up, and his race was negated.

8 Maybe you have heard of it, Miss Palmdale?

9 MR. LICHT: Yes, I have heard of that horse.

10 CHAIRMAN BURTON: Is that the horse or the drug?

11 SENATOR KNIGHT: That was the horse. And he was
12 a pretty good horse. He was winning.

13 CHAIRMAN BURTON: They need an airport and a
14 veterans' home there.

15 SENATOR KNIGHT: I know. We got the airport.
16 We're working on the veterans' home.

17 And his big thing was that he wanted to brief the
18 Board on the conditions, and why, and what it might do. You
19 know, it may not get too much attention with the local people,
20 but if you had a big race, and a big horse, and all of a sudden
21 you contested it because of, as Mr. Bianco said, a couple of
22 parts per billion, that might be embarrassing for the Board and
23 for the industry in California.

24 Are you doing anything to correct that issue?

25 MR. LICHT: We have secured a contract with UC
26 Davis. The entire Board visited their testing facilities, and
27 we're confident that we have the state-of-the-art testing
28 facilities.

1 SENATOR KNIGHT: We can test alright, and I'm
2 well aware of the fact that you can test and get down to
3 probably one part per billion.

4 But can you negotiate that kind of information?

5 MR. LICHT: Well, Senator, the problem as I see
6 it, I think integrity on the back side of racing and the front
7 side is very important. Without that, we have nothing, because
8 nobody's going to want to wager if they think the dice are
9 crooked.

10 So, we have make sure that there's total
11 integrity. And if somebody has a positive test, we have what
12 they call a Trainer Responsibility Rule. Which means that the
13 trainer is responsible for anything that contaminates the
14 horse's system in any way.

15 If we didn't have that, I don't see how we could
16 ever prosecute successfully a case against a trainer for an
17 illegal medication.

18 SENATOR KNIGHT: I understand that, but this
19 doesn't speak to that issue.

20 The issue is, I think you have to define further
21 what kind of drugs, spurious drugs, that you can accept.

22 MR. LICHT: We recently -- we recently changed
23 the regulations to provide threshold levels for certain
24 medications. I think that specifically does address what you're
25 talking about.

26 Certain drugs that are therapeutic in nature, for
27 instance, Clenbuteral, which is a bronchial dilator, has now a
28 threshold level in case there is a small remnant of that

1 particular drug in a horse's system when he runs. It would not
2 cause the horse to be disqualified or the owner to lose the
3 purse.

4 And we're looking at that, and we're looking at
5 doing more of that, provided the drug is a therapeutic drug. I
6 don't believe we should do it on anything that's not deemed a
7 therapeutic drug, because that really does not belong in the
8 horse's system at the time of the race, or probably not at all.

9 SENATOR KNIGHT: Is coffee considered a
10 therapeutic drug?

11 MR. LICHT: Caffeine, no. But caffeine is a
12 unique drug because, it's my understanding, that, you know, for
13 a 1500 pound horse to have his performance enhanced by coffee,
14 you know, they'd need to have all the Starbucks in Sacramento.

15 SENATOR KNIGHT: That's right, but the problem
16 was that there was a trace of caffeine in the horse, and the
17 Board's position was, it's zero tolerance and their reg says,
18 know, you can't have it. Not that you will evaluate it. It
19 just says you can't.

20 So, he has no choice, no recourse with his horse.

21 MR. LICHT: I believe that California,
22 particularly our Board, is at the top of the game as far as at
23 the state-of-the-art in progressing toward threshold levels for
24 any kind of medication that could be deemed either therapeutic
25 and/or even possibly we are looking into nonperformance
26 enhancing.

27 But again, I would emphasize that anything that
28 could be performance enhancing, I believe we have to hold to a

1 very strict level that would protect the public and make sure
2 that the playing field is level.

3 SENATOR KNIGHT: Oh, I understand that.

4 Have you given any thought to listening to the
5 owner of Miss Palmdale?

6 MR. LICHT: Have I ever given any thought to
7 listening to him? I'd be happy to.

8 That was some time ago, wasn't it, before I was
9 on the Board? I'd be happy to talk Mr. Anderson.

10 SENATOR KNIGHT: Greg Anderson, yes.

11 MR. LICHT: I'll be happy. I remember the whole
12 incident.

13 SENATOR KNIGHT: Would you give him a call?

14 MR. LICHT: Sure. How do I get his number, from
15 you?

16 SENATOR KNIGHT: Sure.

17 CHAIRMAN BURTON: The earlier testimony just
18 talked about how environmentally, like the wind could blow the
19 poppy seeds, and then the poppy, or whatever it is, it's kind of
20 like Elaine on "Seinfeld," she ate poppy seed things and failed
21 her drug test.

22 MR. LICHT: I remember.

23 CHAIRMAN BURTON: I guess the thing is, that's
24 accidental. So, accidentally something could happen that could
25 enhance performance.

26 I don't know, one, how you would know if it was
27 environmental or accidental; and two, whether that should make a
28 difference. Maybe it makes difference as to the purse but not

1 as to a suspension or anything.

2 MR. LICHT: That does happen now. That actually
3 is the standard. There can be a time where the owner loses the
4 purse, but the trainer is not in fact sanctioned in any way.

5 CHAIRMAN BURTON: Because it was something beyond
6 the control, so to speak?

7 MR. LICHT: Right, because it's very rare, it's
8 almost impossible, to catch somebody in the act of actually
9 illegally medicating a horse.

10 It's even rarer to have somebody admit that they
11 illegally medicated the horse.

12 So, what we have is what they call a Trainer
13 Responsibility Rule, which says that if an illegal substance is
14 found in the horse, then the trainer is responsible, period, end
15 of the story. He is allowed to show mitigating circumstances to
16 mitigate against any sanctions against him, but as far as taking
17 the purse away, that's iron clad.

18 And again, you know, certainly we can look into
19 making sure that the owner's rights are protected in connection
20 with something that's nonperformance enhancing, but I feel that
21 the backbone of this industry is the patron, and we have to
22 protect them. We have to protect them with integrity of the
23 game.

24 CHAIRMAN BURTON: Senator Romero.

25 SENATOR ROMERO: How do you assess the future of
26 horse racing in California in light of competition, state
27 lottery, casinos, Las Vegas right on the border? And what can
28 be done, perhaps, to resuscitate and expand the market that

1 might participate?

2 MR. LICHT: I think marketing -- I've said that
3 golf has been known as an old man's sport, not even an old
4 person's sport. Now golf is for everybody.

5 What did they do? It was mainly through
6 television that's marketed this anti-void, as you say, Senator.

7 It's all in how the sport is marketing its time
8 that horse racing get into the modern age of marketing, and
9 marketing to younger people, marketing to different minority
10 groups that might have an interest in it.

11 Some children who live in big cities never get to
12 see anything -- any animal other than a dog or a cat unless they
13 go to the zoo. Well, the race track is a good opportunity. And
14 I believe we have to bring the sport to the people, as opposed
15 to the gambling.

16 I think that we can't compete with the lottery,
17 with the Indian reservation gambling, with other types of
18 gambling. We have to make sure that it's the sport first, and
19 then gambling will follow.

20 CHAIRMAN BURTON: I think the toughest thing is,
21 I myself, when I've going to tracks, which I stopped, there's
22 nothing more boring than the 35 minutes in between races.

23 MR. LICHT: Well, that's --

24 CHAIRMAN BURTON: Except for Iffy the dopest
25 that's looking at the form and doing everything, and then, you
26 know, ripping up his ticket. But I mean, I think that's
27 something with a new generation of people.

28 I don't know whether they can shorten the time

1 between them or what, but I can't see a bunch of young people
2 sitting there for 35 minutes, waiting for next time they come
3 around the stretch, than at home.

4 MR. LICHT: There was a time when that time was
5 filled with socializing, when there were a lot of people there.
6 People would go have a beer. People would go get a hot dog and
7 talk, and give an opportunity to talk with their friends.

8 A lot of people make the same complaint about
9 golf. I don't want to spend five hours on a golf course to hit
10 a ball.

11 CHAIRMAN BURTON: How right they are.

12 [Laughter.]

13 CHAIRMAN BURTON: It's a good walk spoiled, as
14 George Bernard Shaw said.

15 Senator Karnette.

16 SENATOR KARNETTE: I understand you had some
17 dealings with the SEC. Could you tell us a little bit about
18 that?

19 MR. LICHT: Yes. In 1999, after approximately
20 five years of an investigation and so forth, I signed a consent
21 decree to civil charges that were made against me with respect
22 to a corporate board that I sat on, and that I allegedly tipped
23 some people to purchase a stock in, to purchase stocks.

24 I am unable to directly comment because my
25 consent decree says that I will not admit or deny the charges,
26 but I can tell you that the company that I worked for, that I
27 was on the board, kept me on the board the entire time after the
28 charges were made. The company made its own independent

1 investigation; found no wrong doing, and the company was
2 supportive of me throughout the process.

3 It was an arduous, horrible process that I
4 wouldn't wish on anybody. My family, my friends, my business
5 clientele were all affected. And I made what I call a business
6 decision to put it behind me and enter into a settlement.

7 It in no way was ever -- criminal charges were
8 never brought nor even talked about. It never had anything
9 along that line. It was a civil case that was brought against
10 me, and yes, I did settle it, and I paid a civil penalty.

11 CHAIRMAN BURTON: Do you have any family here,
12 Mr. Licht?

13 MR. LICHT: No, I don't.

14 CHAIRMAN BURTON: Witnesses in support.

15 Same group, so to speak.

16 MR. TUNNEY: Senator, same group, different
17 order.

18 I'm Peter Tunney, representing Magna
19 Entertainment Corporation in support of Commissioner Licht.

20 MR. LICCARDO: Ron Liccardo, Pari-Mutual
21 Employees of California. We're also supporting Mr. Licht.
22 Thank you.

23 MR. BLONIEN: Rod Blonien, representing Los
24 Alamitos Race Course and Thoroughbred Owners of California, in
25 support.

26 MR. KORBY: Christopher Korby, California
27 Authority of Racing Fairs, speaking in support of Mr. Licht's
28 confirmation.

1 MR. FOX: Bob Fox, California Thoroughbred
2 Trainers, California Thoroughbred Breeders.

3 I would just comment that one of the things we
4 appreciate about Mr. Licht is that he does spend a lot of time
5 on the back side talking to people. We can sure validate that.

6 MR. TERRY: Parke Terry, Youbet.com.

7 Mr. Chairman, just so you're clear on what we
8 do --

9 CHAIRMAN BURTON: We'll meet in the hall
10 tomorrow, and you can tell me all about it.

11 We've got a lot of people waiting for
12 confirmation.

13 MR. TERRY: We are in support of Mr. Licht's
14 nomination.

15 MR. BAEDEKER: Rick Baedeker, Hollywood Park
16 Race Track. We are in support of Roger Licht's confirmation.

17 MR. GONSALVES: Anthony Gonsalves, representing
18 Oak Tree Racing and Del Mar Thoroughbred Club in support.

19 MR. MILLER: George Miller on behalf of the TVG
20 in support.

21 CHAIRMAN BURTON: TVG?

22 MR. MILLER: Television Games. Youbet's a
23 competitor.

24 CHAIRMAN BURTON: If you could come up and may be
25 tell us what you do.

26 [Laughter.]

27 CHAIRMAN BURTON: Witnesses in opposition?
28 Hearing none, move the nomination.

1 SECRETARY WEBB: Senator Karnette. Senator
2 Knight.

3 SENATOR KNIGHT: Aye.

4 SECRETARY WEBB: Knight Aye. Senator Romero.

5 SENATOR ROMERO: Aye.

6 SECRETARY WEBB: Romero Aye. Senator Burton.

7 CHAIRMAN BURTON: Aye.

8 SECRETARY WEBB: Burton Aye. Three to zero.

9 CHAIRMAN BURTON: Congratulations.

10 MR. LICHT: Thank you, Senators.

11 CHAIRMAN BURTON: State Board of Education,
12 Donald Fisher.

13 Carole Migden is here.

14 ASSEMBLY MEMBER MIGDEN: Thank you very much, Mr.
15 President and Members.

16 It's my pleasure to join with our Education
17 Secretary in introduction of Donald Fisher, who is a
18 distinguished San Francisco owner and operator of The Gap and
19 Old Navy. Tells me he's been seeing hard times, but we don't
20 think so. He's the furnisher of 7,000 jobs for the people of
21 California.

22 Mr. Fisher has always been involved in civic
23 affairs in San Francisco, and has expressed a long-standing
24 interest in education. He spear-headed a charter school,
25 Mr. Knight, in San Francisco. And when sometimes there were
26 some difficulties negotiating between public schools and charter
27 schools, Mr. Fisher took the initiative to have us visit and
28 showed us some growing results for some wonderful inner-city

1 opportunities for young people.

2 And he and his wife have been part of the civic
3 and philanthropic contributions and are, I think, very
4 distinguished and important individuals in California life, as
5 well as in the city's civic life.

6 Mr. Fisher here seeks reappointment to the State
7 Board of Education, and we think he would serve people well
8 because he represents kind of the broad spectrum of what it
9 takes to work in San Francisco.

10 It's a viable living example, Senator Romero, of
11 diverse populations coming together and struggling to try and
12 make a difference, and this gentleman is a man of means who's
13 built a business on his own, has accomplished but care to give
14 back to the community, and has illustrated that time and again
15 in his distinguished career of public service.

16 Thank you, Mr. President.

17 MS. MAZZONI: Thank you, Mr. President and
18 Senators. I'm here briefly today to introduce you to the
19 members that are up for confirmation for the State Board of
20 Education.

21 Kerry Mazzoni, Secretary for Education.

22 They're up for confirmation today. Mr. Fisher,
23 along with the other members, have all been active in
24 education. They have shown their commitment to education, and
25 they have been important participants in education in
26 California.

27 Their confirmation today to the State Board is
28 important to the administration, and I ask for your approval of

1 their confirmations.

2 Thank you.

3 CHAIRMAN BURTON: Don.

4 MR. FISHER: Thank you.

5 I've spent a year so far on the State Board of
6 Education, and it's been a wonderful experience for me. I'm
7 very pleased to say that I think that the quality of the members
8 of the Board is exceptional. And I think the things that are
9 being done by the State Board today are really leading to great,
10 great things to come for the students in this state. Standards
11 have been raised considerably, and there's a great amount of
12 interest in being able to continue to raise the standards and
13 the education of all the kids in this state.

14 I went to public school in San Francisco all the
15 way through and the University of California.

16 I've been involved with kids now almost for
17 thirty-five or forty years. I was on the Board of the Columbia
18 Park Boys and Girls Clubs, and about two years ago, arranged for
19 the merger of that club with the San Francisco Boys and Girls
20 Clubs in San Francisco to make one group of clubs called the
21 Boys and Girls Clubs of San Francisco.

22 I've also had an appointment to the Board of
23 Governors of the Boys and Girls Clubs of America, which is the
24 major overall board that governs all the 2200 Boys and Girls
25 Clubs in the United States.

26 I'm no longer CEO of the Gap. I gave that up in
27 1995. My wife and I have been spending the last few years
28 trying to pay attention to doing something and giving back to

1 the community through education. And we have, through our
2 foundation, been giving money and encouraging other people to do
3 things to improve the lives of the kids in California as well as
4 nationally.

5 We have a couple of interests specifically, and
6 that is of teacher quality and the supply of effective schools.
7 And along the lines of the teacher quality, we have encouraged
8 Wendy Kopp in Teach for America to increase the number of
9 teachers that they are supplying to the United States from 2,000
10 to 4,000. That's a substantial number. Those are kids that
11 come out of college and go right into teaching, and do that as a
12 community service for two years. It's like the Peace Corps.

13 I think the results from Teach for America have
14 been really very encouraging, and I look forward to many more
15 years and much more in the way of that organization doing
16 things.

17 They also have a group called the New Teachers
18 Project which we have helped fund. And they have set up an
19 interviewing process in the City of San Francisco, Compton, San
20 Jose, and they are supplying schools with teachers from around
21 the United States, and making it easier for the teachers to get
22 jobs, and to bring the right teachers into the city.

23 My wife and I have also started a group, or taken
24 over a group, of charter schools called KIPP, which stands for
25 Knowledge Is Power Program. The KIPP Academy, there's one in
26 the Bronx and one in Houston, were shown on a 20-minute spot on
27 "60 Minutes." We think that there's an opportunity to take this
28 concept, which is a middle school concept, all for

1 under-privileged children, and to take it nationally.

2 We are reigning principals at the high school in
3 Berkeley in the summer time for six or seven weeks, and then
4 they go out, and we find locations for them to open charter
5 schools around the United States. And with the charter school
6 law in California, we think there's a big opportunity here to do
7 this.

8 This is all, obviously, nonprofit, and the money
9 comes from the foundation that we have originally set up.

10 Our feeling is, frankly, that poverty is no
11 excuse for poor performance. And we notice in this state right
12 now that 45 percent of the students today are Hispanic, and 35
13 percent are white. And so, it's obvious what's happening in
14 this state, and we have to be able to live with it and make it
15 work properly. I think that that's a major objective of my wife
16 and mine.

17 I think that the Board of Education is a place
18 that we can start and really add something that we think is
19 quite important, because as far as I'm concerned, in this age
20 that's coming along, they're going to be knows and the
21 knows-nots, and that's going to be a real problem if we don't
22 educate every one of the students that are available to go to
23 our public schools.

24 So, I also think that I bring a business
25 perspective to the Board, a little bit different perspective
26 than the other members have. And I think the diversity on the
27 Board with different interests and different backgrounds is
28 quite important.

1 CHAIRMAN BURTON: What factors do you think lead
2 to poor performance in the state schools, and what type of
3 effective interventions do you think would work by turning low
4 performing schools around?

5 MR. FISHER: That's a huge problem, to turn the
6 low performing schools around.

7 I think that all a State Board can do is set the
8 ideas and the rules and regulations that have to be carried out
9 by the department. And there are 1100 separate school districts
10 in this state, each one managed on its own. And through their
11 school boards, they have to be able to make the right decisions
12 to turn those schools around.

13 The state has the opportunity to take over some
14 schools, which we did in Compton.

15 CHAIRMAN BURTON: They have to be --

16 MR. FISHER: They have to be in really bad
17 condition for a long period of time.

18 CHAIRMAN BURTON: Did they do it in Richmond?

19 MR. FISHER: Compton, and Compton has been turned
20 back to the school board.

21 CHAIRMAN BURTON: Richmond, too, I think.

22 SENATOR KNIGHT: They changed their name, too,
23 didn't they?

24 MR. FISHER: That's something that we talk about
25 in our Board meetings quite a bit. And there's no real answer
26 to it, because in all honesty, I don't believe that the State
27 Board should be managing schools.

28 CHAIRMAN BURTON: The recent STAR reports

1 provided information on the performance of students with
2 disabilities, and they scored substantially below the STAR 2000
3 tests than nondisabled.

4 What's the Board doing to try to improve the
5 performance of students with disabilities?

6 MR. FISHER: We're allowing coaching and help for
7 the disabled to take their tests.

8 Originally, they were not allowed to take --
9 they had to take the tests the same way most other kids take the
10 test. But now they're able to have people read to them if they
11 are seeing impaired, if they're disabled in any other fashion.
12 They're given longer times to take the test.

13 We sincerely believe that that's important, that
14 those kids gets an opportunity that is a little bit different
15 than the regular kids get.

16 CHAIRMAN BURTON: So, at one time, kids that
17 couldn't see too well had to take a test that they couldn't see?

18 MR. FISHER: I guess they took it in Braille; I'm
19 not sure how that test was being taken.

20 CHAIRMAN BURTON: There was a while back the
21 State Board passed regulations dealing with students with
22 disabilities, and then somebody went to court and that was
23 stayed, thrown out, what?

24 MS. MAZZONI: Senator, the State Board has
25 regulations relative to children with disabilities.

26 However, in the student's IEP there are certain
27 accommodations that can written into that, so those
28 accommodations are to be honored.

1 But there is -- you are correct, there has been a
2 stay on a suit, and the Board, as I understand it, is looking at
3 an alternative assessment for special ed students.

4 CHAIRMAN BURTON: So, there was a stay by the
5 court, and then is the State Board trying to work something out?

6 MS. MAZZONI: Yes.

7 CHAIRMAN BURTON: Or do what the state always
8 does when a court tells them they're wrong, you know, fight it
9 and waste a lot of time?

10 MS. MAZZONI: The State Board is definitely
11 trying to address the issue in a way that is good for children.

12 CHAIRMAN BURTON: That's, I assume, what they
13 thought they were doing with the reg.

14 Are they trying to work it out?

15 MS. MAZZONI: So that the students have the
16 appropriate -- yes, appropriate accommodations, and that they
17 are not -- they're being tested in an appropriate manner.

18 CHAIRMAN BURTON: Talk about, Don, if you would,
19 the Edison thing in San Francisco.

20 MR. FISHER: In 1997, my son came to me with the
21 idea that he heard that there was a for-profit business in New
22 York that was opening charter schools and contract schools
23 around the United States, called the Edison Project. And the
24 results that they were having with the kids that they were
25 teaching in those schools was quite good.

26 He asked me if we might be able to do something
27 here in California. The number of dollars that the Edison
28 Project receives, which is just what every other charter school

1 gets, which is around \$5200 a student, wasn't enough for them to
2 make an investment in the buildings and facilities, and the
3 technology that is involved.

4 So, my wife and I, through our foundation, put up
5 money to open about 15 of those schools in the state. We have
6 put that money -- we invested that money in the school district,
7 and the money was given to the school district. The school
8 district then turned around and invested it in fixing up the
9 facilities. They painted the buildings. They put in new
10 carpets, new furniture in all the rooms, new technology. They
11 gave computers to every child to take home with them that was in
12 the third grade and above. And these are K through 8 schools,
13 or K through 6 schools, depending on where they are.

14 So far, there are about nine schools in the state
15 that have opened, that Edison has opened. And they've been
16 quite successful. Their test scores have been good.

17 And I think the important thing is that
18 regardless if it's a for-profit or a nonprofit, if the answer,
19 the results come out well, that's all that makes a difference
20 for the kids.

21 I have, you know, our investment has strictly
22 been through the school department.

23 CHAIRMAN BURTON: Senator Knight.

24 SENATOR KNIGHT: Thank you, Mr. Chairman.

25 As Assemblywoman Migden indicated, I'm very much
26 in favor of charter schools, and I've got a tremendous one in
27 Victorville that I think everybody ought to visit.

28 CHAIRMAN BURTON: That's an awful high price to

1 get a vote, going to Victorville.

2 [Laughter.]

3 CHAIRMAN BURTON: I mean, talking to that guy
4 with the race horse is one thing.

5 SENATOR KNIGHT: Just anything, John.

6 I had a question. The other day you wrote me a
7 letter, Mr. Fisher, and your letterhead says that you're still
8 the Chairman of Gap.

9 MR. FISHER: I am the Chairman and the founder,
10 but not the CEO.

11 SENATOR KNIGHT: Very good.

12 You indicated how you can come up with the number
13 of kids that have not passed.

14 I was more concerned with specific numbers from a
15 school district, or from various schools, just a representative
16 school district, or number of schools, to get an idea of how
17 many kids are not passing today.

18 MR. FISHER: Well, I think that the letter that
19 you received showed that there were about 25,000 students out of
20 300,000 that are graduating.

21 SENATOR KNIGHT: But I'm questioning your
22 methodology in coming up with that number. I think that the
23 schools keep track of those figures, and I'd like specific
24 figures.

25 MR. FISHER: Actually the lady that worked for me
26 did it.

27 SENATOR KNIGHT: I understand, I think, your
28 methodology here, and how you came up with it. But I don't

1 necessarily agree. I wanted specific numbers.

2 MR. FISHER: I doubt, though, that that kind of
3 information is so readily available in the state here.

4 SENATOR KNIGHT: You don't think it is?

5 MR. FISHER: I don't think there's any more than
6 what we're able to get for you.

7 SENATOR KNIGHT: You mean to tell me that schools
8 don't keep track of the number of students that they fail?

9 MR. FISHER: Well, at the local level, on the
10 basis of what we have here, the local level, but not on the
11 basis of the state level.

12 SENATOR KNIGHT: No, that's what I wanted. I
13 wanted specific numbers.

14 MR. FISHER: I'll have to get that for you. I
15 don't have it.

16 SENATOR KNIGHT: Okay, I appreciate that. Thank
17 you.

18 CHAIRMAN BURTON: Senator Karnette.

19 SENATOR KARNETTE: First of all, I'd like to say
20 Senator O'Connell thinks that you do a very good job. I just
21 thought you'd like to know that.

22 My question, I have several questions. One, you
23 talked about KIPP. That was in the Bronx, you said.

24 MR. FISHER: One is in the Bronx and one is in
25 Houston.

26 SENATOR KARNETTE: This was a charter school, but
27 did it go through the district? That's my big concern, is that
28 district -- and all of the charter schools of which you speak

1 have gone through the school districts.

2 MR. FISHER: That's right.

3 SENATOR KARNETTE: Like I know Superintendent
4 Cohn from Long Beach, there's one.

5 MR. FISHER: Right.

6 SENATOR KARNETTE: And it seems to be going very
7 well.

8 MR. FISHER: Right.

9 SENATOR KARNETTE: So, the schools don't operate
10 outside the district?

11 MR. FISHER: No, these schools are one school
12 operating within the district.

13 We opened three KIPP schools this last fall: one
14 in Houston, again, so it now has two schools; and one in rural
15 North Carolina; and another one in Washington, D.C.

16 SENATOR KARNETTE: When it comes to working with
17 students and what the Board's job is, I, as a past teacher, I
18 know that everybody's concerned about the testing. You didn't
19 mention that too much.

20 What's the Board's role in doing something about
21 what I consider to be an over emphasis on testing? I know that
22 state laws make, there's certain things we have to do.

23 MR. FISHER: We are at the present time doing
24 some research to find out how well this testing is working, and
25 what the implications are, especially on the exit exam.

26 And we are redoing the Stanford Nine or the STAR
27 test to be more contemporary with what's going on here in the
28 state at the present time.

1 Then there's the California Standards Test, which
2 has been given last year to the students in English language,
3 and this year English and math. That test will continue to be
4 expanded.

5 But the objective that we have is to reduce the
6 amount of testing and the amount of testing time that is being
7 used presently in the schools. I'm very concerned about that
8 aspect of what's going on.

9 There's a CELD test as well for English learners,
10 and there are a lot of other kinds of things that the schools
11 required to do that take off from teaching time.

12 SENATOR KARNETTE: Right, and students can't
13 learn if they're just tested constantly. You have to have a
14 little time to learn what to do.

15 The other question that I had had to do with the
16 disabled, and you answered that. You said you're working with
17 that.

18 I think, Senator Knight, I can't help but say,
19 when you ask how many people failed, kids drop out all along and
20 re-enter. I don't think it can be answered the way you want it
21 answered. That's just my comment. That's it.

22 CHAIRMAN BURTON: Senator Romero.

23 SENATOR ROMERO: Thank you, Senator Burton.

24 Before I ask the nominee some questions, I just
25 want to state for the record that I'm very disappointed when I
26 take look at the composition of this State Board. There are 11
27 members.

28 In a state as diverse as California, I find it,

1 especially after the last Census, rather remarkable that we have
2 one Latino serving on that State Board. We have a student who's
3 up, although her term expires in a few months, and that's just
4 for a one-year term for the student position.

5 But I just wanted to state for the record, and
6 this is really communicated to the administration, that as the
7 Senate becomes more diverse, I find it will become harder and
8 harder to ask us to confirm boards, especially -- I represent
9 East Los Angeles. That's L.A. Unified. L.A. Unified is about
10 80 percent Latino.

11 We are having continuous discussions with the
12 Latino Caucus over issues of English learners. This is of
13 critical concern.

14 CHAIRMAN BURTON: And that's a concern that Bob
15 Guinays and his group on the Regents, but I don't think you can
16 blame the appointee.

17 I think this is an issue that's got to be taken
18 up with the Caucus and with the Governor, because the Governor
19 makes the appointments.

20 And basically, I know that in my judgment how the
21 newest appointee to the Supreme Court came about was that there
22 was a real problem with, you know, Latino attorneys. And I know
23 that although they never quite got in to see the Governor, I
24 think it was very clear, and I made it clear to Burt Pines that
25 there was going to -- and it didn't matter to me -- but there
26 was going to be a lot of trouble if something wasn't done.

27 I think that it is up to the Caucus to go down.
28 The Governor may not see the Latino lawyers, but I think he

1 would certainly see the Members of the Caucus, and let him know
2 your feelings about this.

3 I've gotten a letter saying we shouldn't confirm
4 an appointee to the Regents, whom I happen to know personally
5 and would be an excellent Regent, because he happens to look
6 like me, except he's got dark hair, he doesn't wear glasses,
7 better built.

8 SENATOR ROMERO: How is his temperament?

9 CHAIRMAN BURTON: He's got one.

10 But anyway, I think your point's well taken,
11 Senator, but again, I think that's something that has to be
12 addressed to the Governor. And I'm sure that Mr. Lloyd, if need
13 be, could set up the meeting or just call down there directly.
14 I think that's a very serious issue, but it should be addressed
15 there.

16 SENATOR ROMERO: And I agree with you, and that's
17 why I'd indicated, this is really directed to the administration
18 since we are acting on this today.

19 CHAIRMAN BURTON: I understand.

20 SENATOR ROMERO: Now I have some questions for
21 the nominee.

22 SENATOR KNIGHT: Bill Simon would take care of
23 that, I'm sure.

24 CHAIRMAN BURTON: Everybody would look like
25 Wholesome Bread.

26 [Laughter.]

27 SENATOR ROMERO: All right.

28 The Latino Caucus, of course, has engaged with

1 the State Board of Education regarding the performance of
2 English learners. And we are very concerned about the status of
3 English learners, why they are doing so poorly in California
4 schools, and it seems to be declining over time.

5 I'd like to ask if you can comment on the
6 condition, the outreach, the education of the English learners,
7 and if you believe that the California English Language
8 Development Test should be included part of the API scores?

9 MR. FISHER: As far as the last thing, I think
10 that it is being removed and segregated, going forward. It has
11 been a part of the --

12 SENATOR ROMERO: Starting when?

13 MR. FISHER: I think it's starting this next
14 year. I'm not sure of the exact timing on that.

15 But as far as the law, or Proposition 227, which
16 set the situation for English learners, requires that the parent
17 come to the school and either take the recommendation of the
18 principal or decide on their own whether the student should go
19 into English learning or be immersed in an English class. And
20 that's what the law is today.

21 And we have interpreted it, I think, broadly to
22 not require that the student go into 30 days of English every
23 year, which is what Prop. 227, I believe, said.

24 And as far as those kids are concerned, if they
25 once get out of -- they spend 30 days in an English immersion,
26 and then they go into English learners classes, and they stay
27 that way until they're able to pass the CELD Test.

28 SENATOR ROMERO: Let me ask you if you believe

1 that a parental exception waiver should be denied for an English
2 learner if the school doesn't offer the immersion program?

3 MR. FISHER: All we can do is take care of what
4 the law says. The law says that if there are -- there have to
5 be 20 kids in a particular class in order to opt out of the
6 English immersion. And if there aren't 20, then they, I guess,
7 have to go to another school because at the present time, the
8 school's not required to set that up unless there are a minimum
9 of 20 in that grade.

10 We have no ability to change that.

11 SENATOR KARNETTE: One question I forgot to
12 comment on.

13 The federal legislation, how's that going to
14 affect the testing? I forgot to mention that. Because the
15 federal legislation that was passed says every child shall be
16 tested.

17 Does that affect us at all, or are we doing it
18 already?

19 MR. FISHER: At this time, our tests are
20 sufficient to cover the federal legislation, as I understand it.

21 MS. MAZZONI: Senator, we are very well aligned
22 with the new federal language. They required testing students
23 in grades three through eight. We test two through eleven.

24 There will be some issues. We're working very
25 closely with the federal Department of Education on the
26 regulations. There are a couple kind of touchy areas.

27 One is, what does a qualified teacher mean in
28 each classroom? We need to have that in four years, and so

1 we're working with them on the definition of what qualified is,
2 because California actually has a higher standard for
3 certification than many other states.

4 The other issue is --

5 SENATOR KARNETTE: That's interesting. We have a
6 higher, so a qualified teacher in Alabama could be different.

7 MS. MAZZONI: Yes. What we're concerned about,
8 and I've expressed this to Secretary Page, is that we don't want
9 to lower our standards to meet federal regulations. So, we're
10 working very closely with them so that we don't have to do that.

11 SENATOR KARNETTE: That would be something;
12 wouldn't it.

13 MS. MAZZONI: The other one is what proficiency
14 means. In twelve years, all students are to be proficient.

15 Again, California has, which now has been
16 documented by an outside verifier, that California has the most
17 rigorous standards in the country for our students. And what
18 our definition of proficiency might be might be higher than what
19 the federal government says proficiency is.

20 So again, we want to make sure that we are well
21 aligned with them and not having to lower our standards, which
22 we feel are appropriate.

23 There is another issue that is a little bit
24 difficult to handle right now, and that is what adequate yearly
25 progress means. And that will be measured.

26 So, all of those are regulatory issues that we
27 are working very closely with the federal government on.

28 SENATOR KARNETTE: Thank you.

1 CHAIRMAN BURTON: Is the State Board of Education
2 going to function now that John Mockler's gone?

3 [Laughter.]

4 MR. FISHER: I think so. I think we have a nice
5 replacement.

6 CHAIRMAN BURTON: Did you bring any family?

7 MR. FISHER: Yes, I brought my son, John. You
8 can tell when you look at him.

9 CHAIRMAN BURTON: Exactly.

10 Witnesses in support. Witnesses in opposition.

11 SENATOR KARNETTE: Move it.

12 CHAIRMAN BURTON: Moved by Senator Karnette.
13 Call the roll.

14 SECRETARY WEBB: Senator Karnette.

15 SENATOR KARNETTE: Aye.

16 SECRETARY WEBB: Karnette Aye. Senator Knight.

17 SENATOR KNIGHT: Aye.

18 SECRETARY WEBB: Knight Aye. Senator Romero.
19 Senator Burton.

20 CHAIRMAN BURTON: Aye.

21 SECRETARY WEBB: Burton Aye. Three to zero.

22 CHAIRMAN BURTON: Congratulations, Don.

23 CHAIRMAN BURTON: Hi.

24 MS. GONCALVES: Hello.

25 CHAIRMAN BURTON: How are you?

26 MS. GONCALVES: Good, thank you.

27 Mr. Chairman and distinguished Members of the
28 senate Rules Committee, thank you for the opportunity to present

1 and discuss briefly my goals as a member of the State Board of
2 Education.

3 CHAIRMAN BURTON: I think you should tell us your
4 name.

5 MS. GONCALVES: Erika Goncalves, from San
6 Francisco, Gateway Charter School.

7 The State Board student member position is, by
8 its nature, one in which the appointee must think and act in a
9 short term, since the position is only one year in duration.

10 Also, this position is certainly a major interest
11 and an experience that is most meaningful to me right now.

12 I believe that the State Board's member must,
13 first and foremost, be willing to support the Board's ongoing
14 work, not become an impediment to these efforts. Towards that
15 end, I have found my State Board colleagues, Superintendent
16 Delaine Eastin, and staff of the State Board of Education, and
17 California Department of Education to be extremely helpful in
18 bringing me up to speed and adapting me to my position so that
19 I'm able to cast votes and comment in ways that are thoughtful
20 and constructive.

21 The student member needs to bring the student
22 voice to the State Board of Education. For this, I was pleased
23 to not only recommend but to support a motion that the
24 parents-student report of the state testing be reformatted for
25 2002 to be easier to use and provide more of the essential
26 information that parents and students need.

27 I was also pleased to recommend and vote for a
28 motion making the whole area of public communication one of the

1 key priorities that the State Board will look for in selection
2 of the next state assessment system contractor.

3 Moreover, I'm very proud of the fact that in
4 January of 2002, I participated in making the California Board
5 of Education become the first in the nation to adopt reading
6 language arts and English language development programs with
7 components specifically designed to meet the needs of English
8 learners and struggling students who are significantly below
9 grade level in reading achievement.

10 Being an immigrant and a former English learner
11 myself, I feel more responsibility to give voice to those
12 students as I did in January.

13 Finally, the student member needs to be the State
14 Board's outreach to students. Towards that end, I'm pleased to
15 represent the State Board in various leadership conferences,
16 including the State Advisory Board on Education and the Students
17 Advisory Board on Legislation.

18 I have found and feel the numerous communications
19 to students throughout the state. It is a vital part of
20 California's efforts to empower high school students, not just
21 on paper but in fact.

22 Being a student member to the State Board of
23 Education is a great deal of work, but it's work that I pursue
24 with tremendous passion and dedication. Years from now, I
25 believe that it's an experience which I'll look back and say
26 honestly to myself, I made a difference.

27 Thank you.

28 CHAIRMAN BURTON: All right.

1 Where is Gateway School?

2 MS. GONCALVES: IT'S in San Francisco.

3 And by the way, it's not the charter school in
4 Fresno that got its charter revoked. We're totally different.

5 CHAIRMAN BURTON: I'm from San Francisco. Where
6 is it?

7 MS. GONCALVES: It's near the Avenues, Sunset.

8 CHAIRMAN BURTON: Where, 15th and Kircom, where?

9 MS. GONCALVES: It's 7th Avenue. You mean the
10 location of the school? It's 7th Avenue and Judah.

11 CHAIRMAN BURTON: Oh, Laguna Honda?

12 MS. GONCALVES: Yes, yes. It's on that building.

13 CHAIRMAN BURTON: My neighborhood.

14 MS. GONCALVES: All right.

15 CHAIRMAN BURTON: Where's Canto de Brazil?

16 MS. GONCALVES: It's on Franklin between Oak and
17 Beech, and near the Civic Center.

18 CHAIRMAN BURTON: Right near home?

19 MS. GONCALVES: Yeah, right near my house.

20 CHAIRMAN BURTON: Food good?

21 MS. GONCALVES: Very good, delicious. If you
22 come by, I'll buy you lunch sometime.

23 Oh, I can't do that? I get mistaken on all these
24 laws.

25 CHAIRMAN BURTON: If it's under nine dollars.
26 It's coming up the left side of the street;
27 right?

28 MS. GONCALVES: Yeah, yeah, yeah. The big yellow

1 sign.

2 CHAIRMAN BURTON: When do you work?

3 MS. GONCALVES: I used to work every Friday and
4 Saturday nights, hosting at the restaurant, but now with the
5 work I have, I do most of the paperwork at home in the office.
6 My mom used to be an accountant in Brazil, so she kind of passed
7 it on to me.

8 CHAIRMAN BURTON: My daughter went to Everett.
9 When did you go to Everett?

10 MS. GONCALVES: I started there in 6th grade,
11 '95.

12 CHAIRMAN BURTON: Are they still the Everett
13 Owls?

14 MS. GONCALVES: Yes, Everett Owls, red and blue.

15 CHAIRMAN BURTON: Anything else you wanted in the
16 history of the city, Pete?

17 SENATOR KNIGHT: Now I know about San Francisco.

18 CHAIRMAN BURTON: You know a little bit about a
19 lot of things.

20 Senator Knight.

21 SENATOR KNIGHT: No questions.

22 CHAIRMAN BURTON: Senator Karnette.

23 SENATOR KARNETTE: I was impressed that you're
24 taking physics.

25 CHAIRMAN BURTON: I didn't take physics.

26 Is that an optional thing?

27 MS. GONCALVES: Yes.

28 CHAIRMAN BURTON: And you took it?

1 MS. GONCALVES: Yes.

2 CHAIRMAN BURTON: It's not an easy course.

3 MS. GONCALVES: No, it's not an easy course

4 CHAIRMAN BURTON: I took mechanical drawing
5 instead, and I got a D.

6 MS. GONCALVES: It's very tough. I just took a
7 test this morning right before I came.

8 CHAIRMAN BURTON: Senator Romero.

9 SENATOR ROMERO: Thank you.

10 Is the student member a voting member?

11 MS. GONCALVES: Yes, it's a voting member.

12 SENATOR ROMERO: Have you ever thought about
13 increasing the number of students on that board?

14 MS. GONCALVES: Well I thought of --

15 CHAIRMAN BURTON: We have to do that.

16 SENATOR ROMERO: That may be true, but the lobby
17 would come from them. I'd support it.

18 MS. GONCALVES: I thought of increasing the term
19 limit, you know, making it like three years.

20 SENATOR ROMERO: We tried that.

21 [Laughter.]

22 CHAIRMAN BURTON: It's just one year; right?

23 MS. GONCALVES: Yeah, it's very, very short.
24 It's almost ending.

25 CHAIRMAN BURTON: That would be legislation, but
26 that almost would make at least a couple years to let them
27 figure out what they're doing. Really, with one year, it's just
28 kind of not quite figure head, but --

1 MS. GONCALVES: It does take a time for you to
2 get adapted.

3 CHAIRMAN BURTON: How many on the State Board?

4 MS. GONCALVES: Eleven total.

5 CHAIRMAN BURTON: We could increase it by a
6 couple. Do it in an election year.

7 Did you bring any family with you, Erika?

8 MS. GONCALVES: No.

9 CHAIRMAN BURTON: Any witnesses in support? Any
10 witnesses in opposition?

11 SENATOR KNIGHT: Move it.

12 CHAIRMAN BURTON: Moved by Senator Knight. Call
13 the roll.

14 SECRETARY WEBB: Senator Karnette.

15 SENATOR KARNETTE: Aye.

16 SECRETARY WEBB: Karnette Aye. Senator Knight.

17 SENATOR KNIGHT: Aye.

18 SECRETARY WEBB: Knight Aye. Senator Romero.

19 SENATOR ROMERO: Aye.

20 SECRETARY WEBB: Romero Aye. Senator Burton.

21 CHAIRMAN BURTON: Aye.

22 SECRETARY WEBB: Burton Aye. Four to zero.

23 CHAIRMAN BURTON: Congratulations.

24 MS. GONCALVES: Thank you.

25 CHAIRMAN BURTON: Joe Nunez.

26 MR. NUNEZ: Only in America can Don Fisher and
27 Joe Nunez be on the same day to be confirmed by the Senate.
28 This is terrific, and I appreciate it very much.

1 While Don brings the point of view of the
2 business person, I think that I bring the experience of a
3 practitioner with 20 years of teaching experience, and the last
4 7 years working at the state policy level, I actually think that
5 the experience that I bring and add to the State Board is
6 important and valuable.

7 I was a lobbyist when Governor Davis introduced
8 his bills on testing and accountability. I worked on both of
9 those issues. And I think that I have an intimate knowledge of
10 those issues that are affecting our students and our schools.

11 I've had a chance to deal with the statewide
12 issues as we move forward.

13 You have my written comments before you, and I'm
14 happy to take any questions.

15 CHAIRMAN BURTON: Senator Knight.

16 SENATOR KNIGHT: Sometime ago, I guess a year
17 ago, we gave the Exit exam to the 9th graders. They came up
18 with some results, and they didn't look so good, so they reduced
19 the passing level.

20 What brought that about? My understanding is
21 it's down to 55 percent in math, maybe 65 percent in English.
22 Is that reasonable?

23 MR. NUNEZ: I was appointed to the State Board in
24 November by the Governor, and so, I wasn't on the Board when
25 those passing rates were created.

26 I do know that the rates that were set based on
27 the results is a baseline. And hopefully over time, we will --

28 SENATOR KNIGHT: Fifty-five percent is a baseline

1 passing grade? Is that what we're saying, that that's the best
2 we can do?

3 And if you don't make 55 percent, are we going to
4 lower it to 50?

5 MR. NUNEZ: I think the intent is to move -- is
6 to increase the passing rate as we get more information from the
7 test taking that students take over time.

8 CHAIRMAN BURTON: If you've got something to say,
9 Kerry, say it.

10 MS. MAZZONI: Thank you, Mr. President.

11 Senator, one of the things that I think is
12 important to remember is that this was a test that was given to
13 9th graders that is actually a test to graduate from high
14 school.

15 SENATOR KNIGHT: I understand that.

16 MS. MAZZONI: So, we would not anticipate a high
17 number of those students passing it at 9th grade when they
18 haven't in fact been exposed.

19 CHAIRMAN BURTON: You just said it was a dumb
20 test. You tested people on stuff that they didn't get.

21 MS. MAZZONI: That's what I just said.

22 CHAIRMAN BURTON: But that's what I mean. It was
23 a dumb test from the get-go.

24 SENATOR KNIGHT: Don't you think the students
25 know that they hadn't studied or they weren't exposed to the
26 information in the 9th grade that they were expected to have at
27 the 12th grade?

28 MR. NUNEZ: Well, in education we call it

1 opportunity to learn, that the kids never had the opportunity to
2 take the material that was on the test that we expect them to
3 have, and over time, we hope that we're going to --

4 CHAIRMAN BURTON: It was just a dumb, stupid idea
5 to test people on stuff they hadn't been taught.

6 MR. NUNEZ: We agree with you.

7 SENATOR KNIGHT: Are you going to take my
8 question or what?

9 CHAIRMAN BURTON: No.

10 SENATOR KNIGHT: I guess the question is,
11 recognizing that there weren't going to be too many of them pass
12 this test, why do we then at the end of it say, well, but a
13 passing grade was 55 percent, as opposed to 70 percent? Why did
14 we do that?

15 MR. NUNEZ: Well, the Department of Education had
16 a study put together by an organization to come back and report
17 on the data from the test. And based to that data, and based on
18 advice from the Department of Education, I'm sure that that's
19 where the advice came do draw the line where it was drawn.

20 SENATOR KNIGHT: Let me ask it a different way.

21 Why didn't we say only 55 percent of the students
22 passed it, as opposed to saying, 55 is a passing grade?

23 MR. NUNEZ: I can't answer that question,
24 Senator.

25 SENATOR KARNETTE: I have a question.

26 What is a passing grade to a 9th grader when they
27 don't really have to pass it until they're a senior? And do
28 they keep taking it until they make 95?

1 MR. NUNEZ: Well, they do keep taking the test
2 until they pass in order to graduate from high school. I mean,
3 once it gets -- once it's put into place, they do have to
4 continue. They're allowed to retake the test until they pass
5 it.

6 CHAIRMAN BURTON: It's stupid. I'm not even in
7 education. I mean, it's one of the dumbest things that I've
8 ever seen. It's just stupid.

9 I mean, so you keep taking it until you pass it.
10 And after you passed it --

11 SENATOR KNIGHT: Then you can go to college.

12 CHAIRMAN BURTON: Exactly. Like, lots of luck.

13 MR. NUNEZ: Well, the Legislature made a
14 determination --

15 CHAIRMAN BURTON: No, he made a determination.

16 SENATOR ROMERO: I'll jump in then.

17 Again, I want to turn the attention to English
18 learners again. If you can comment as to what you believe is
19 the status of English learners in California, and why they are
20 faring so poorly? And what can the Board do, what is the Board
21 doing? Also, to include non-English speaking parents in the
22 participatory process?

23 MR. NUNEZ: Those are all challenges.

24 We do have 1.25 million English learners in
25 California. It's a huge population that we grapple with every
26 day.

27 But I want to share with you some information
28 that actually is exciting and shows some promise in a good

1 direction for English learners. For example, in 1998, only
2 57,000 English learners scored above the 50th percentile on
3 nationally norm tests of reading language arts. By 2001,
4 130,000 English learners achieved at this level.

5 In 1998, 140,000 English learners scored above
6 the 50th percentile nationally norm tests of math. In 2001,
7 nearly 300,000 English learners achieved at the 50 percentile.

8 So, I think that what is happening with the laws
9 that have been passed by the Legislature, by the Governor, and
10 by the policies that have been put in place by the Board, the
11 teachers are having the materials that they need; teachers are
12 getting the textbooks that have ELD incorporated. We're the
13 first state nationally to have English language development
14 materials incorporated directly in the English language arts
15 textbooks. It hasn't happened anywhere else in the world.

16 And so, we are making progress. And don't get me
17 wrong, there's a lot of work to do.

18 I had the good fortune to visit schools in Los
19 Angeles and in Alum Rock with English learners, and watching
20 them, kindergarten through 3rd grade, learning to read, speak,
21 and write academic English, and it is the most exciting thing
22 you've ever seen in your life. Children really joyfully
23 learning every day.

24 SENATOR ROMERO: The raw numbers have gone up,
25 but so have the number of students enrolled in California
26 schools. I was a teacher for almost 20 years, and 50 percent is
27 still an F.

28 So, we're increasing, maybe moving from an

1 F-minus-minus to maybe an F+, but 50 percent, at least in my
2 mind, is not much to brag about.

3 MR. NUNEZ: You also asked about the parents.
4 Over the last two or three Board meetings of the State Board of
5 Education, parents have been coming to make sure that the State
6 Board has the parental waiver issues in place with regard to
7 227. We have affirmed that language in the regulations that we
8 have passed and that are currently out to be voted on at the
9 April meeting. And I think that the parents will be happy with
10 the results.

11 SENATOR ROMERO: And that would be for the
12 parents individually, regardless of what the district offer to
13 be able to have the waiver.

14 MR. NUNEZ: The law states that it's only the
15 parents who can ask for the waiver. And so, we have to follow
16 the law. Mr. Fisher talked about the fact that the law
17 restricts us in the fact that we have to have at least 20
18 children at a school site in order to offer an alternative
19 program.

20 So, to the extent that we can comply with the
21 law, that's what we're doing.

22 CHAIRMAN BURTON: But you can aggressively seek
23 parents getting the waiver, or you could just sit on your hands;
24 right?

25 MR. NUNEZ: One more time, Senator?

26 CHAIRMAN BURTON: If the parents have to ask for
27 a waiver.

28 MR. NUNEZ: Yes.

1 CHAIRMAN BURTON: Either a school district,
2 somebody, can aggressively let them know that.

3 MR. NUNEZ: Yes.

4 CHAIRMAN BURTON: So that parents who would like
5 to do it if they knew about it can do it, as opposed to saying
6 nothing, and then people who'd really like to do the waiver
7 don't know about it and do nothing; right?

8 MR. NUNEZ: Well, the regulations provide that
9 the options for parents have to be in a language they
10 understand. So, that is another option and another avenue that
11 the Board has put forward to trying to make sure that parents
12 have every opportunity to understand their rights.

13 CHAIRMAN BURTON: Okay.

14 Now, you've been on the Board since --

15 MR. NUNEZ: November.

16 CHAIRMAN BURTON: And they still identify you as
17 the answer man.

18 MR. NUNEZ: [Laughs.]

19 CHAIRMAN BURTON: Is that funny? It's a very
20 serious question.

21 MR. NUNEZ: Well, I don't know if I'm the answer
22 man or not, but you've been talking to some of my colleagues.

23 CHAIRMAN BURTON: Only Mr. Fisher.

24 MR. NUNEZ: He and I sat next to each other for a
25 number of meetings, so I appreciate that.

26 CHAIRMAN BURTON: I mean, who the hell's watching
27 the store at the CTA if they're all over here watching you?

28 MR. NUNEZ: That's a very good question

1 CHAIRMAN BURTON: I think we ought to find that
2 out.

3 Do you have any here family with you?

4 MR. NUNEZ: No, I don't, Senator.

5 CHAIRMAN BURTON: Witnesses in support.

6 MS. FAULKS: I'm Lynne Faulks on behalf of the
7 California Teachers Association, and we're very proud to support
8 Joe's nomination. And he does have many of the answers.

9 CHAIRMAN BURTON: But who's got the questions?

10 Are you here for any purpose, Mr. Mockler? Just
11 like the retired people that go into the courtroom, watch the
12 trials?

13 [Laughter.]

14 CHAIRMAN BURTON: Witnesses in opposition.
15 Hearing none, move the nomination.

16 SECRETARY WEBB: Senator Karnette.

17 SENATOR KARNETTE: Aye.

18 SECRETARY WEBB: Karnette Aye. Senator Knight.

19 SENATOR KNIGHT: Aye.

20 SECRETARY WEBB: Knight Aye. Senator Romero.

21 SENATOR ROMERO: Aye.

22 SECRETARY WEBB: Romero Aye. Senator Burton.

23 CHAIRMAN BURTON: Aye.

24 SECRETARY WEBB: Burton Aye. Four to zero.

25 CHAIRMAN BURTON: Congratulations, Joe.

26 MR. NUNEZ: Thank you.

27 CHAIRMAN BURTON: It would appear to me we have
28 somebody from San Diego.

1 Susan Tacheny, Ph.D.

2 Senator Alpert.

3 SENATOR ALPERT: Yes, Senator Burton. Actually,
4 the nominee isn't from San Diego, but rather is someone that
5 I've come to know here in Sacramento with her work with the
6 CBEE, which is the California Business and Excellence in
7 Education roundtable group that she's been heading up. And
8 she's been very helpful in the last few years working on
9 educational issues.

10 She actually has the technical expertise, being a
11 Ph.D. in education. She's been a very thoughtful and helpful
12 person, I think, as we've tried to work on legislation in the
13 past few years.

14 So, I just wanted to have a chance to introduce
15 her today, and offer my support for her nomination.

16 CHAIRMAN BURTON: Go ahead.

17 What do you have to do to get a Ph.D. in
18 education?

19 MS. TACHENY: A lot of course work and a
20 dissertation. It was about, well, I completed the dissertation
21 and course work in two-and-a-half years, but it generally takes
22 five.

23 CHAIRMAN BURTON: Does it?

24 MS. TACHENY: Yeah.

25 CHAIRMAN BURTON: I've served with many a Member
26 who's had a Ph.D. in education.

27 MS. TACHENY: Well, it depends -- there's two
28 different tracks. There's an EDD, which is more practical

1 program, and there's a Ph.D., which has a whole set of research
2 statistics, so there's two different programs.

3 CHAIRMAN BURTON: Go ahead.

4 MS. TACHENY: Senator Burton and Members of the
5 Committee, I appreciate the opportunity to present myself to you
6 today. And I know your staff has prepared you well, and you've
7 read some of the materials, so I'm going to err on the side of
8 brevity and look forward to your questions.

9 My background, as Senator Alpert said, is, I have
10 a Ph.D. in education, but I've also, in my almost 20 years of
11 work in education, been a youth worker and a parent advocate and
12 a district administrator in what Ms. Karnette will agree with me
13 is probably the biggest, baddest, bureaucracy in the state, L.A.
14 Unified.

15 So, I have worn a lot of hats in this business.

16 This Legislature has enacted in the last few
17 years an ambitious set of programs that I am a passionate
18 supporter of in terms of standards, and student testing, and the
19 support for teachers to make all of that make sense.

20 Our job at the State Board of Education is to
21 implement all of that, and I've been enjoying that work for the
22 last year. And if it pleases the Senate, I would like to
23 continue.

24 I especially believe in the standards because of
25 the belief implied that all students can learn. I think
26 anything less than that is simply misplaced compassion, that we
27 are in California saying it's not enough to accept performance
28 of an average group of kids, but we want to dig down and make

1 sure every single kid out there is getting the attention that
2 they need.

3 I'll give you two brief examples, then stop and
4 hear your questions.

5 The Senate, under the leadership of Senator
6 Alpert, passed Senate Bill 233, which is the program to
7 re-authorize testing. We are working really hard to streamline
8 that testing system under that legislation, and to reduce the
9 amount of testing, especially at the high school level, which I
10 talked some about with Senator Karnette earlier today.

11 You'll also see an improved parent report out of
12 the STAR testing program. That's another thing we're trying to
13 do to make sure that this system makes sense, not just at the
14 state level, but in the schools and classrooms, and for parents
15 when they receive these reports.

16 So, with that, I'll end. And Mr. Fisher talked
17 about how proud he is to be a part of this Board, and I've been
18 very proud as well, and I would appreciate the opportunity to
19 continue, if it pleases the Senate.

20 CHAIRMAN BURTON: Senator Knight.

21 SENATOR KNIGHT: No questions.

22 CHAIRMAN BURTON: Senator Karnette.

23 SENATOR KARNETTE: No questions. I think we've
24 talked enough about these issues.

25 CHAIRMAN BURTON: Senator Romero.

26 SENATOR ROMERO: Just one question.

27 There has been a lot of discussion about English
28 learners, and let me just ask you if you think that there should

1 be a statewide standard for the reclassification of the English
2 learners so that districts do not define reclassification
3 differently?

4 MS. TACHENY: Senator, we have, as best as we can
5 have currently, a statewide standard.

6 The challenge in setting one that's absolutely
7 rock-solid permanent is that we've only done the test on which
8 that standard is based for a year. So, we don't have enough
9 feedback to make it solid. So what we have right now, I think,
10 is the best of both worlds, is sort of the best judgment that
11 the state can make based on the data that's available, with
12 enough discretion from teachers and educators at the local level
13 to make sense out of our judgment.

14 And then as we continue to refine the English
15 language development test, we'll be able to put something in
16 place that is backed by more years of research.

17 SENATOR ROMERO: Just on this one year, are you
18 finding discrepancies from districts, whether they're rural or
19 urban?

20 MS. TACHENY: We've only just gotten the results
21 back from the implementation of tests, so we can't say yet.

22 I actually like the idea that this test allows a
23 bit of room for teacher discretion, because I'm sure, as you
24 know, learning -- mastering a language needs some room for
25 teachers to be able to say what it is they know about working
26 directly with students. And so, the way we've set the standard
27 is, we say there's five levels of performance. If you're in the
28 bottom two, you're definitely an English language learner. If

1 you're in the top two, you're definitely to be reclassified.
2 But in the middle of the band, we allow teachers to error on
3 either side, depending on their experience with kids.

4 I like it that we're allowing for the teachers to
5 weigh in on these decisions.

6 CHAIRMAN BURTON: Senator Knight.

7 SENATOR KNIGHT: Thank you, Mr. Chairman. I do
8 have one question.

9 All of the people who have been here all, and all
10 of the people who talk about education are very much concerned
11 about making sure that all kids are learning, and all kids have
12 the opportunity to learn.

13 But it appears to me that we're pushing to say,
14 all kids should learn to the point where they are now qualified
15 to go to college. And I would submit that not all kids should
16 go to college, can go to college, or will go to college. There
17 are other avenues for kids to be productive, responsible
18 citizens in the vocational areas.

19 Do we have a program, or is there something in
20 the school system that moves in that direction or promotes that
21 area?

22 MS. TACHENY: Well, I think two quick responses.
23 One is that I agree with you. I do think that we need to
24 recognize that the product of K-12 schooling is not sending all
25 children to college, but we want them all to have that
26 opportunity if they so choose. We don't want to do the choosing
27 for them in how we move them through the program.

28 SENATOR KNIGHT: But we do tend to choose for

1 them when we only give them one option; don't we?

2 MS. TACHENY: Our standard mathematics is
3 algebra, which we used to think, way back in the day, was the
4 college standard.

5 Currently, for example, as a friend of mine just
6 learned the hard way, if you want to enroll your child in a
7 course to be an electrician, which doesn't require college
8 training, it requires algebra. That's true in many of the
9 technical trades. Because of the role of technology in our
10 economy, algebra is a baseline skill that is becoming important
11 across many of the trades, as well as for college preparation.

12 So, algebra, I don't think, is a college
13 standard. It's a standard for the current economy that we need
14 to address.

15 CHAIRMAN BURTON: Do we have much voc. ed. any
16 more?

17 MS. TACHENY: Yeah, the vocational education
18 programs and the rock rope programs, and some of the other
19 programs that have been funded are still being funded.

20 And I'm excited about the work that those
21 programs are doing to align themselves to standards. So, for
22 example, if there's a vocation program that is doing machinist's
23 work, or electrician's work, or automotive work, they're looking
24 at ways to integrate mathematics into those classrooms.

25 So, if they're teaching those technical skills,
26 they're helping kids understand why an algebra requirement makes
27 sense and is needed to do well in the course work.

28 CHAIRMAN BURTON: Do they have any polytechnic

1 schools any more that are actually --

2 MS. TACHENY: I know from my work in Los Angeles,
3 I'm aware of several there.

4 CHAIRMAN BURTON: But I mean, are they really
5 polytechnic schools any more, or they just kept name from when
6 it used to be, Long Beach Poly.

7 SENATOR KARNETTE: That's the most advanced
8 school in the district.

9 CHAIRMAN BURTON: I mean the polytechnic schools
10 when I was a kid were, you know, technical schools where they
11 taught kids trades and crafts. They still have the names, but
12 they're not.

13 Like Pete said, there's always room for
14 mechanics, although it's a different thing. You have to kind of
15 know computers, and electricians.

16 I just wonder, you know, even computer repair,
17 there should be a lot of jobs and a lot of education for kids
18 that aren't going to go to college because either they don't
19 want to, they can't either afford to go because they can't
20 afford to go, or they can't afford to go because they might get
21 married out of high school, or whatever.

22 MS. TACHENY: I think you're absolutely right.

23 I think that one of the things that is exciting
24 to me about education today that a lot of people don't realize
25 is how much diversity there is once you get beyond the four or
26 five core areas of state standards, how much diversity there is
27 in programs.

28 I recently visited a school, for example, in

1 Bakersfield that was a charter school for kids who, in other
2 circumstances, would have dropped out, but they built a program
3 around technology, computers and radio. And in the morning,
4 they had a rigorous and very exciting set of course work around
5 the standards, and in the afternoon, the kids were doing online
6 broadcasting and working with computers.

7 These were kids who, if you would have looked at
8 their -- just looked at them on paper, you would have written
9 them off as kids who weren't going to make it. And it was
10 really exciting to see them in classrooms, mixing up with their
11 professor about physics and things like that, because they were
12 so engaged in the technology.

13 So, I think if you spent some time out there,
14 you'll find out that we're doing -- there's a lot of interesting
15 things. Like in Los Angeles, there are a lot of exciting
16 programs in partnership with the animation industry, which is
17 now highly graphic, but it's artistic, requires a great deal of
18 technology, great deal of math to support it, so it's blending
19 areas of instruction that we never would have seen come together
20 in the past.

21 CHAIRMAN BURTON: Any witnesses in support?

22 MS. RAMER: Good afternoon. Lisa Ramer on behalf
23 of the Marin County Office of Education and CATESOL, all in
24 strong support of Suzanne.

25 Thank you.

26 CHAIRMAN BURTON: I wish to hell the Marin
27 County of Education was at that meeting I had today with a bunch
28 of people from Solano and Napa. I go to a meeting, and there's

1 nobody there from the district.

2 MR. KAHN: Chris Kahn, representing the
3 California Business Roundtable, in support.

4 CHAIRMAN BURTON: Witnesses the opposition?
5 Hearing none, move the nomination.

6 SECRETARY WEBB: Senator Karnette.

7 SENATOR KARNETTE: Aye.

8 SECRETARY WEBB: Karnette Aye. Senator Knight.

9 SENATOR KNIGHT: Aye.

10 SECRETARY WEBB: Knight Aye. Senator Romero.
11 Senator Burton.

12 CHAIRMAN BURTON: Aye.

13 SECRETARY WEBB: Burton Aye. Three to zero.

14 CHAIRMAN BURTON: Congratulations.

15 MS. TACHENY: Thank you.

16 [Thereupon this portion of the
17 Senate Rules Committee hearing
18 was terminated at approximately.

19 3:50 P.M.]

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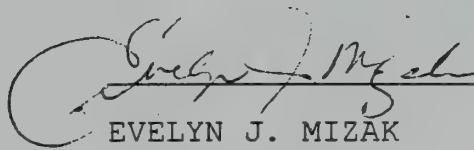
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IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of March, 2002.


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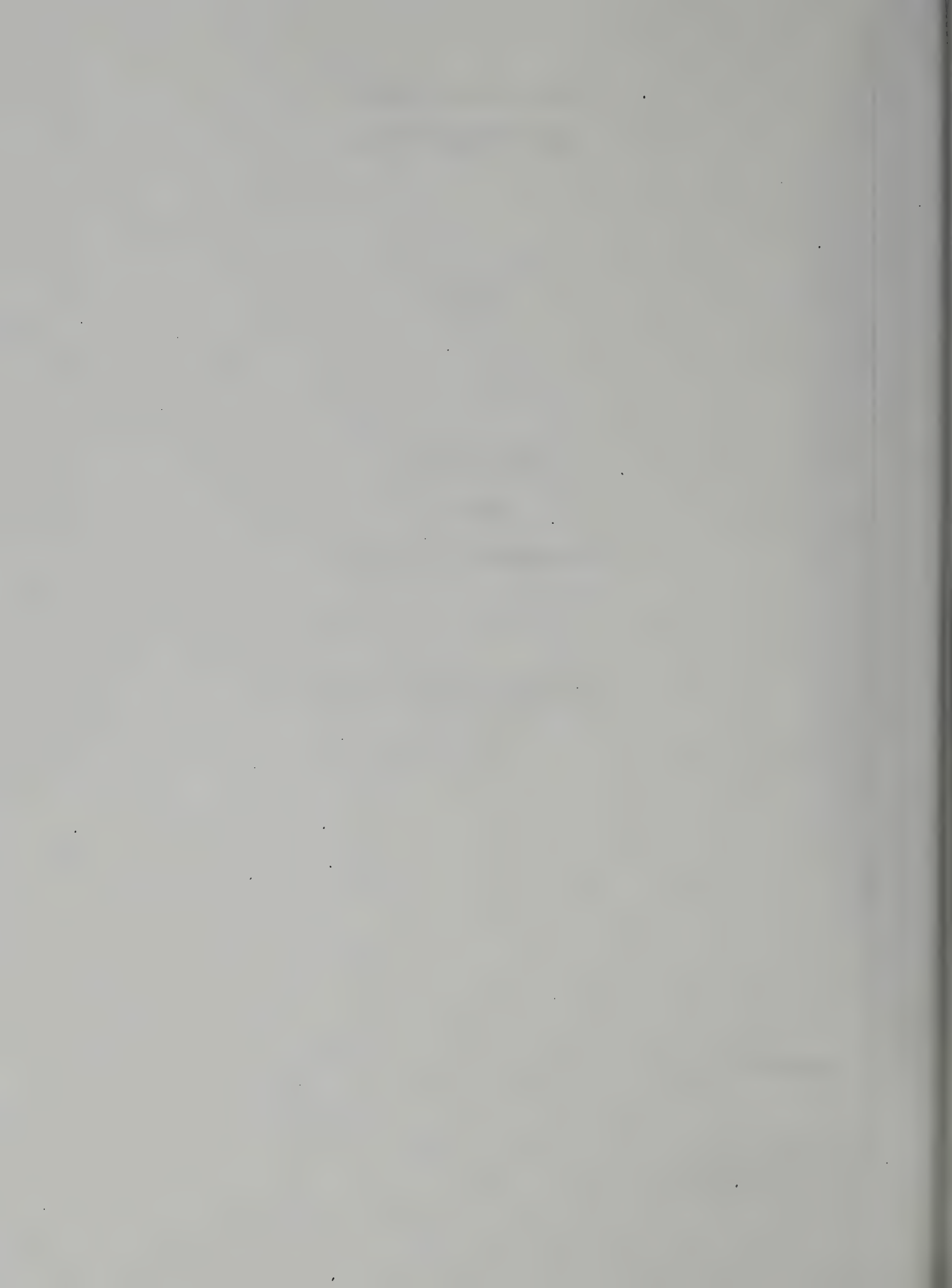
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SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

RYAN SHERMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

JAMES W. KELLOGG, Member
Fish and Game Commission

DAVID S. FREEMAN, Chair
California Consumer Power and Conservation Financing
Authority, Board of Directors

SENATOR DEBRA BOWEN

JOHN WHITE
Center for Energy Efficiency & Renewable Technologies
Natural Resources Defense Council

SANDRA SPELLISCY
Planning and Conservation League

1 PETE CONATY

California Coalition of Utility Employees

2 SUNNE WRIGHT McPEAK, Member

3 California Consumer Power and Conservation Financing
4 Authority, Board of Directors

5 JOHN R. STEVENS, Member

6 California Consumer Power and Conservation Financing
Authority, Board of Directors

7 DONALD VIAL, Member

8 California Consumer Power and Conservation Financing
9 Authority, Board of Directors

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: What we are going to do is take Mr. Kellogg, Fish and Game, first. Then we'll deal with the Power Authority appointments.

Jim Kellogg, Member of the Fish and Game Commission.

We confirmed you some while back to the California Transportation Commission. Did anything bad happen since then and now that we should know about?

MR. KELLOGG: No, it was all good. All positive stuff.

CHAIRMAN BURTON: Fine. Make your statement, please.

MR. KELLOGG: Thank you, Senator Burton and Senators of the Committee.

While serving on the CTC, I found that by successfully building consensus between the different factions, we were able to actually accomplish many good things, and that one person can make a difference when given the opportunity.

I had great experiences working with environmentalists and all the state and federal agencies. Although I enjoyed the opportunity, transportation really is not my passion.

Since the Governor has nominated me to the Fish and Game Commission, I have met with several different environmental groups as well as fishing and hunting groups. I believe that I gained their confidence that I can apply to the

1 Fish and Game Commission the experiences learned through my time
2 on the California Transportation Commission, to once again reach
3 consensus over issues that are important to them and their
4 causes.

5 My goal is to bring as much consensus as possible
6 as we manage the conservation of wildlife and the protection and
7 restoration of the environment.

8 I have gained the support of the California
9 League of Conservation Voters, the Ocean Conservancy, the
10 Natural Resources Defense Council, Audubon of California, the
11 Resources and Landowners Coalition, Grassland Water District,
12 California Wildlife Federation, California Sportsmen's Lobby,
13 Safari Club International, Mule Deer Foundation, and many
14 others.

15 I hope you will see fit to confirm and give me
16 the opportunity to serve, for I do have a passion.

17 CHAIRMAN BURTON: Senator Johnson.

18 SENATOR JOHNSON: No questions.

19 CHAIRMAN BURTON: Senator Knight.

20 SENATOR KNIGHT: No questions.

21 CHAIRMAN BURTON: Senator Karnette.

22 SENATOR KARNETTE: I'd just like to ask you, how
23 do you feel about the coho salmon? That's all.

24 MR. KELLOGG: I feel that if the evidence is
25 there that they're in danger, then we need to take a good hard
26 look at what to do about that to save their survival.

27 SENATOR KARNETTE: Thank you.

28 CHAIRMAN BURTON: Do you have any family with

1 you, Jim?

2 MR. KELLOGG: No. All my friends I consider
3 brothers and sisters that are here to be with me, but no
4 immediate family, no.

5 CHAIRMAN BURTON: Witnesses in support? The
6 record reflects the groups that are in support.

7 Witnesses in opposition? Hearing none, move the
8 nomination.

9 SECRETARY WEBB: Senator Karnette.

10 SENATOR KARNETTE: Aye.

11 SECRETARY WEBB: Karnette Aye. Senator Knight.

12 SENATOR KNIGHT: Aye.

13 SECRETARY WEBB: Knight Aye. Senator Johnson.

14 SENATOR JOHNSON: Aye.

15 SECRETARY WEBB: Johnson Aye. Senator Burton.

16 CHAIRMAN BURTON: Aye.

17 We'll hold it open for Senator Romero.

18 Congratulations.

19 MR. KELLOGG: Thank you.

20 [Thereafter, SENATOR ROMERO

21 added her Aye vote, making the

22 final vote 5-0 for confirmation.]

23 CHAIRMAN BURTON: I believe that's a six-year
24 term, is it?

25 MR. KELLOGG: It's a four-year remaining on a
26 six-year.

27 CHAIRMAN BURTON: Four years. Free at last.

28 David Freeman, Chair of the California Consumer

1 Power and Conservation Financing Authority, Board of Directors.

2 Senator Bowen.

3 SENATOR BOWEN: Thank you, Mr. Chair and Members.

4 It is my pleasure to present to you this
5 afternoon S. David Freeman, the Governor's nominee to head up
6 the California Power Authority.

7 One of my hopes for this hearing is that we will
8 focus on what the goal and mission of the Power Authority should
9 be, and how, as the Chair of that Authority, Mr. Freeman tends
10 to meet the goals and missions of the Power Authority.

11 My other great hope is that I don't get wounded
12 in the remake of "Gunfight at the OK Corral."

13 I think it's important to remember that a year
14 ago at this time, the state and the ratepayers were getting
15 taken out behind the wood shed, and getting schooled in some
16 ways that no one had ever seen before in California electricity
17 markets. To say that the state wasn't equipped to figure out
18 how to fight back is an understatement. And I believe that it
19 was Steve Peace who said, "It takes a pirate to deal with the
20 pirates."

21 It was David Freeman who began to give the state
22 a fighting chance of figuring out what to do and how to deal
23 with the generators. Hindsight, of course, is 20-20, and I am
24 sure that I have many of the same questions as others in this
25 room do about some of the things that the state did to deal with
26 the problems we were in last year, but there is really no way to
27 know what the right thing or the wrong thing is, because we
28 don't have a control. We don't know what would have happened if

1 we'd taken other courses of action.

2 So, I think it's time to focus on the future, the
3 role of the Power Authority, and that is a role that is still
4 being defined. I believe that it should continue to have the
5 ability to build state-owned power plants. We're seeing some
6 indication that the private sector is choosing not to build in
7 places where we had expected that it would.

8 But I think the Authority at this point is
9 focusing its initial efforts on getting the cheapest megawatts
10 possible through conservation. It's a role I lobbied for. I
11 think you see that in the Authority's investment plan that
12 released in February. That's certainly a way for all of us to
13 spend less money on electricity.

14 In closing, I was going to try and get this
15 meeting off to the right foot by playing at maximum volume the
16 Chair and the Vice Chair's favorite rendition of "Big Rock Candy
17 Mountain," but I was a little afraid that I'd blow out the
18 transmission grid in the room.

19 So, I will simply present to you S. David Freeman
20 for your consideration and confirmation as the head of the
21 California Power Authority.

22 CHAIRMAN BURTON: Thank you, Senator.

23 David.

24 MR. FREEMAN: Thank you, Mr. Chairman.

25 My experience is on the record, and there's
26 really nothing that I think I can say to add, except that I've
27 always given every job I've had my best. Like everyone else,
28 I've made mistakes, probably more than I realized. But I do

1 think that most observers believe that I have left each agency
2 that I have led in better shape than I found it.

3 And I have been doing the job of Chair of the
4 Power Authority for the last seven months. And I'm blessed with
5 some independent, intelligent directors that I worked with in
6 putting together our investment plan, which is a far better
7 document than I could have produced alone, and it's due to the
8 wisdom of my fellow colleagues on the Board. But we did get
9 together unanimously on it, and I think I've done my job as
10 Chair in bringing the best out of my colleagues.

11 Our role, as the Chair and the Members of the
12 Committee know perhaps better than I, our job is to see to it
13 that the state has enough reserve capacity so that we never
14 again face the blackouts and the price bites of the past. We
15 can't do it alone. We've laid out an investment plan for the
16 money that's been allocated to us. And our job is to encourage
17 private enterprise but if private enterprise doesn't build the
18 plants, then our job is to step in.

19 We have chosen to meet our goals primarily with
20 conservation and renewables, and we feel that that is in the
21 interests of the consumers, and it's what the consumers say in
22 poll after poll that they desire.

23 Let me just conclude with a personal word. I've
24 dedicated my adult life to public service. I really sincerely
25 appreciate this opportunity to continue in public service. I
26 would consider it a great privilege to be able to serve out a
27 term as a Director and Chair of this agency.

28 All I can say to you is that I will give it my

1 best if you confirm me, which I pray that you do.

2 CHAIRMAN BURTON: Thank you.

3 I've got two questions. Has the Authority given
4 any thought to coordinating, you know, the various energy
5 conservation programs among the state agencies? We've got a ton
6 of state agencies with a ton of conservation programs, and there
7 would appear to be no coordination.

8 Do you have any ideas how we could coordinate
9 them? Can it be done under existing statute? Do we need an
10 executive order to do it under the authority of your statutory
11 authority, or can you guys just do that?

12 MR. FREEMAN: There's no question that the
13 government organization structure can be improved. But for the
14 time being, and I have been meeting diligently every Tuesday
15 evening at 5:00 o'clock with all of the agencies, and we have
16 been pooling our resources.

17 We did conduct a rather successful energy
18 conservation program last summer which was, I think, essential
19 to avoiding blackouts. We are working for next summer's
20 campaign.

21 We received a letter from you, Mr. Chairman, the
22 other day that raised a lot of important pointed questions.
23 We're in the process of answering.

24 But the energy conservation responsibility is, in
25 fact, sprinkled throughout the various agencies. I've been
26 working hard to coordinate them. We can do a better job, but we
27 gave it a pretty good lick this summer, and in the absence of
28 legislation to consolidate the agencies, we are working as a

1 unit, meeting religiously once a week and trying to coordinate
2 our efforts.

3 CHAIRMAN BURTON: I don't know if we have to
4 necessarily consolidate the agencies to coordinate the demand
5 side's reductions.

6 We did send you a letter, but Senators Bowen,
7 Sher, and then somebody trying to sign my name very
8 unsuccessfully, I might add.

9 When you get a chance, we did lay out, which I
10 won't ask you to answer now, but it looks like about nine
11 questions, to do that.

12 And I think it was easier to have demand side
13 reduction last year, when everybody was thinking of it, and
14 thinking the world was going to coming to an end, than this
15 year.

16 So, we would look forward to having those
17 questions answered.

18 MR. FREEMAN: Yes, sir.

19 I want to let you know that group read the letter
20 together last night, we're preparing a reply. And the letter's
21 very helpful to a point of --

22 CHAIRMAN BURTON: If there needs to be, whether
23 it's an executive directive, I don't really favor them, but
24 something like this is fairly easy and it could be.

25 What suggestions, you could do that.

26 Do you have a strategy? A lot of people think
27 that basically some areas in the north of our state, and
28 especially the Bay Area, could have some problems as far as

1 reliability on available electricity to meet demand. And, you
2 know they're all north of the Path 15 bottleneck.

3 Does the Power Authority have any ideas about how
4 to address the reliability problems we have in the northern
5 region, especially in the Bay Area?

6 MR. FREEMAN: Yes, sir. We have a peaker project
7 that we hope will come before our board for approval in April
8 that hopefully can be on line before the summer's over. We also
9 have a demand side initiative that can be focused on the Bay
10 Area that we hope to get it approved in time to be in effect
11 over the summer.

12 We are marshalling all the resources that we have
13 toward helping that situation. And I think the conservation
14 efforts need to be focused in the areas where we anticipate
15 possible shortages, and we will be doing that.

16 CHAIRMAN BURTON: What's the best way to
17 expeditiously deal with the Path 15 bottleneck?

18 MR. FREEMAN: I actually was in a discussion on
19 that subject just yesterday.

20 We have had the federal government, if I might
21 say, flirting with us, and claiming that they were going to do
22 it, but the task force that they put together has fallen apart.
23 And quite frankly, the PUC has ordered PG&E to go ahead and
24 build it, but they seem to be dragging their feet.

25 So, we're looking at coming up with a specific
26 suggestion on that score in the very near future. We were
27 hoping that the federal government, which came out here and said
28 that they were going to build it, would do so, but they haven't

1 come through.

2 CHAIRMAN BURTON: If they build it, won't they
3 control it then?

4 MR. FREEMAN: Well, that's a problem. That's why
5 I personally would favor that the state would go ahead and get
6 that bottleneck eliminated. And the Power Authority, of course,
7 would need an amendment to its statute to enable us to get in
8 there and do it, and we may be recommending that.

9 CHAIRMAN BURTON: Would you know, although it's
10 not in the province, I guess, of the Authority, but what
11 sanction power the PUC would have on PG&E if they don't?

12 In other words, there's some thought that Path 15
13 was never upgraded because it didn't really fit the economic
14 benefit of one of the utilities.

15 Is there a way, does the PUC have any power to
16 tell PG&E to upgrade Path 15?

17 MR. FREEMAN: I think the PUC has enormous power,
18 but unfortunately PG&E is hiding behind the bankruptcy
19 proceeding right now, and that complicates the ability of the
20 PUC to tell them to do anything that costs money. So, that has
21 to be dealt with, I believe.

22 And one reason that I raised the issue again the
23 other day, that we need to get some of that Path 15 built
24 because none of the options seem to be going anywhere right now.

25 CHAIRMAN BURTON: Senator Johnson.

26 SENATOR JOHNSON: Thank you, Mr. Chairman.

27 Let me apologize to the Members of the Committee
28 at the outset. I think this is an extraordinarily important

1 appointment, dealing as it does with billions of dollars.

2 I'm not sure, but I believe that you may be the
3 highest paid person that's directly on the payroll of the state.

4 CHAIRMAN BURTON: The UCLA football coach.

5 SENATOR JOHNSON: I was going to say,
6 Mr. Chairman, that I know we have some people who are employees
7 of the University who are paid more.

8 But at any rate, it's a substantial amount of
9 money we're paying you, but maybe not what it's worth, about
10 \$220,000.

11 MR. FREEMAN: It's \$220,008.

12 SENATOR JOHNSON: Yes, and eight dollars.

13 MR. FREEMAN: I don't know where the eight
14 dollars comes from.

15 SENATOR JOHNSON: The fabled eight dollars.

16 And the billions of dollars that you are involved
17 in.

18 So, Mr. Chairman I apologize, but I do have a
19 lengthy series of questions that I'd like to go through.

20 The first area that I'd like to talk about is the
21 long-term contracts for the purchase of energy. As I understand
22 it, there are more than 50 contracts, and somewhere in the
23 neighborhood of \$43 billion. As I understand it, you were the
24 lead negotiator in negotiating those long-term contracts.

25 So my first question is, did you have final
26 sign-off on those contracts, or did the Governor sign off on
27 them? Basically I'm asking, who made the deal?

28 MR. FREEMAN: The final sign-off was by the head

1 of the Department of Water Resources.

2 But I was, and another person, were delegated the
3 negotiating authority. And I'm not shirking the responsibility
4 for those contracts.

5 During the time from January 26 until March 12,
6 which is the date I went back to L.A., a number of them were
7 done during that period, but not all of them.

8 SENATOR JOHNSON: I'm not suggesting that you
9 ought to shirk responsibility or accept responsibility. I'm
10 just trying to pin down, was the Governor advised, did he have
11 sign-off, or was that done at a lower level? You had the
12 ability to sign on the dotted line on these contracts.

13 MR. FREEMAN: The Governor was not consulted
14 about the details. He delegated the negotiations to me and
15 another gentleman.

16 But the actual sign-off was done by the head of
17 the Department of Water Resources. We were simply advisors and
18 negotiators.

19 CHAIRMAN BURTON: Could I just follow up on
20 that?

21 SENATOR JOHNSON: Sure, Mr. Chairman.

22 CHAIRMAN BURTON: Well now, the ultimate sign-off
23 was the Director of Water Resources.

24 MR. FREEMAN: Yes, sir.

25 CHAIRMAN BURTON: The Governor asked you and who
26 else?

27 MR. FREEMAN: It was Michael Peavy and --

28 CHAIRMAN BURTON: All right, you and Mike.

1 MR. FREEMAN: And Vikram Budhraj, who was the
2 third person.

3 CHAIRMAN BURTON: To negotiate the contracts, I
4 would think that the Director, it was an administrative function
5 or something?

6 SENATOR JOHNSON: Ministerial, is that what
7 you're saying?

8 CHAIRMAN BURTON: Yes, ministerial. I mean, it
9 wasn't like you were negotiating, then he had to be the guy to
10 sign because Water Resources was the one paying the bill.

11 MR. FREEMAN: Right.

12 CHAIRMAN BURTON: He wasn't the one really
13 necessarily overseeing. It's more of a ministerial act.

14 MR. FREEMAN: Yes, sir. I agree with your
15 description.

16 CHAIRMAN BURTON: And the Governor, like, he
17 said, "David, Mike, and other guy, you go negotiate these
18 contracts," and nobody ever said, "And here's what we're doing."
19 Bang, you just did it, and then it went up to Director Hannigan,
20 and Hannigan signed them?

21 I mean, somebody in the horse shoe every now and
22 then didn't say, "Dave, what we are paying and how are we
23 doing?"

24 MR. FREEMAN: There was -- there was no cross
25 examination or second-guessing or advice.

26 CHAIRMAN BURTON: How about just like, "By the
27 way, what are we paying today?"

28 MR. FREEMAN: Well, let's review the situation.

1 There was already a public announcement that they
2 had done a bid before I got there. These were non-binding bids,
3 but they put out the information that the average of the
4 long-term contracts is going to be 6.9 cents.

5 CHAIRMAN BURTON: This is kind of idle curiosity
6 by me, too, but none of the people down there had the idle
7 curiosity like, "How are the contracts going, or what are we
8 paying?" Not second-guessing, not overriding, just say, "Hey,
9 you know, what's the cost of it to date?"

10 MR. FREEMAN: The Governor made it very clear
11 when he called me and asked me to come up here that he was not
12 going to second-guess the negotiations.

13 CHAIRMAN BURTON: How about just saying, "What
14 the hell's going on?" You know, "Is it raining out today?"

15 Nobody even asked what was happening?

16 MR. FREEMAN: He wanted to know when we were
17 going to get some deals done. And we were, you know, we were
18 hurting because the money coming out of the treasury. So, I
19 kept getting pressure to get deals done.

20 CHAIRMAN BURTON: I understand that.

21 All I'm trying to find out, and it's kind of a
22 yes or no, not asking did they second-guess you; not asking, you
23 better go back to the drawing board.

24 Nobody even showed an interest in price, amount,
25 cost, length, anything? Just, "How we doing? Get them done."

26 MR. FREEMAN: I don't recall.

27 CHAIRMAN BURTON: Okay, that's cool.

28 Thanks, Senator Johnson.

1 SENATOR JOHNSON: Well, apparently the Governor
2 was well satisfied, because when the contracts were announced
3 publicly, he was quoted as saying that you and your team of
4 negotiators had done an extraordinarily thoughtful, and
5 negotiated, "in an extraordinarily thoughtful and savvy manner,
6 and that every Californian is the beneficiary. We are nailing
7 down the power at affordable rates, and I can't thank David and
8 VJ enough."

9 So, apparently, he was satisfied with the work
10 product.

11 MR. FREEMAN: Yes, sir.

12 SENATOR JOHNSON: Now, I noticed in the
13 materials, the answers to some questions submitted to you by the
14 staff of the Committee, you've indicated that you felt that
15 those contracts were negotiated at the barrel of a gun, and that
16 you were negotiating over a barrel.

17 So, my next question is, were these good
18 contracts or not?

19 MR. FREEMAN: They were good contracts in the
20 circumstances. We were paying 30 cents a kilowatt hour for
21 electricity. We negotiated some contracts that were under 7
22 cents.

23 And to the extent that we were getting some
24 long-term contracts at a much lower price, to the extent that
25 these contracts required people to build power plants, which we
26 desperately needed, they were good contracts.

27 But that doesn't mean that they were just and
28 reasonable. The bargaining power of these generators were the

1 equivalent of a gun. I mean, they had us over a barrel, and we
2 did as good a job as we could. But the state was facing
3 blackouts. They were charging 30 cents on the spot market.

4 And Senator, if you've ever tried to get somebody
5 that's selling you something for 30 cents to sell it to you for
6 7, you'll realize that we had a tough job on our hands.

7 SENATOR JOHNSON: Recognizing that, and that you
8 and your negotiating team felt yourselves at the point of a gun
9 and over a barrel, why then did you and the Governor for a
10 period of months after these contracts were signed continue to
11 defend them as a good deal? Why did you say, in May and in the
12 course of the summer, we're very proud of those contracts?

13 If you felt that you had been forced into a
14 result because you were at the point of a gun or over a barrel,
15 why didn't you and the Governor say that? Why didn't you just
16 say to the people of California, "We didn't like these deals.
17 We were forced to accept them."

18 But you didn't say that. You said that you were
19 proud of them.

20 MR. FREEMAN: Well, first of all, I had to
21 persuade these gougers to sign the deals. And I had to sit
22 there and listen to them lecture me for day after day about the
23 fact that we owe them hundreds of millions of dollars. And some
24 of them were saying they weren't going to sign up.

25 I had a difficult job on my hands to get them to
26 agree.

27 SENATOR JOHNSON: Mr. Freeman, I concede that you
28 had a difficult job, and that these were complex negotiations.

1 But my question is really a much simpler one.
2 Once they had signed on the dotted line, and they were no longer
3 in a position to bully or browbeat you, why did you continue,
4 and the Governor continue, to defend the contracts as having
5 been a good deal?

6 The Governor's quote, this was "done in an
7 extraordinarily thoughtful and savvy manner, and every
8 Californian is the beneficiary of it. We're nailing down the
9 power at affordable prices, and I can't thank David and VJ
10 enough."

11 Then you, over a period of months following this,
12 as recently as last October, were saying that you were proud of
13 these contracts; they were good deals.

14 MR. FREEMAN: In a sense I'm still proud of the
15 fact that we were able to get contracts at 7 cents when we were
16 being charged 30.

17 But let me answer your question more fully, if I
18 may.

19 SENATOR JOHNSON: Sure.

20 MR. FREEMAN: We continued after I left March 12,
21 we continued the purchasing program. It didn't end in March.
22 And while we were still trying to buy power from these gougers,
23 it didn't seem very appropriate to bad-mouth the deals that we
24 already had.

25 Second of all, the spot market price did not come
26 down until later in the summer, and toward the end of the
27 summer. It came down in part because we dried up the spot
28 market through these long-term contracts and our conservation

1 program.

2 Our strategy worked, but it was not clear that it
3 worked before it worked.

4 SENATOR JOHNSON: I enjoy going to movies. A
5 couple of years ago there was a very popular movie, "A Few Good
6 Men." Toward the end, there's a scene in which Tom Cruise is
7 examining Jack Nicholson on the stand, and he says, "I just want
8 the truth."

9 And Nicholson barks out, "You can't handle the
10 truth."

11 And it seems to me that that's the attitude that
12 is reflected by not coming forward. Once the agreements were
13 signed, you continued to defend them.

14 Let me turn to another question, and that is the
15 the secrecy that surrounded these negotiations.

16 MR. FREEMAN: Yes.

17 SENATOR JOHNSON: And it was only after the
18 California Newspaper Publishers Association, I believe, that
19 Assemblyman Strickland not only threatened, they took you to
20 court, the Governor to court, that finally these contracts were
21 made public.

22 Why was it necessary to continue once the
23 contracts were signed to maintain that level of secrecy?

24 MR. FREEMAN: Well, the negotiations took place
25 over a long period of months. And we certainly did not want to
26 see contracts that had been executed revealed while we were
27 still negotiating with other people.

28 The second reason is that these gougers insisted

1 on a secrecy clause in the contract. They wouldn't sign them
2 without it.

3 We finally went to court, and a court ruled, as
4 you referred to, that we could release them. But we would have
5 been sued for breach of contract if we'd released them on our
6 own, as I recall the situation.

7 SENATOR JOHNSON: I know I'm going to
8 mispronounce his name, your colleague in these negotiations, VJ
9 Budhraj.

10 MR. FREEMAN: He doesn't mind.

11 SENATOR JOHNSON: I appreciate that.

12 As I understand it, he's being paid, over a
13 three-year period, \$6.2 million. Is that accurate or inaccurate?

14 MR. FREEMAN: Most likely accurate if you say so,
15 but I'm not a party to that. He's not my partner. I have
16 nothing to do with him financially.

17 SENATOR JOHNSON: You didn't hire him, and you're
18 not paying him. I'll accept that.

19 CHAIRMAN BURTON: Not at a lousy \$220,000 a year.

20 [Laughter.]

21 SENATOR JOHNSON: He'd have to stretch that \$8 a
22 long way to get there.

23 MR. FREEMAN: I guess what you're saying, he's
24 the better negotiator than I am.

25 [Laughter.]

26 SENATOR JOHNSON: What I'm really leading up to
27 is, with that level of expertise, shouldn't you have been able
28 to predict that these contracts might become less advantageous

1 down the line?

2 And additionally, if you felt that you were
3 negotiating at the point of a gun and over a barrel, did you
4 advise the Governor of that fact?

5 MR. FREEMAN: We all knew that. The alternative
6 was just worse, sir. I mean, we were not naive. We all knew
7 that we had very little bargaining power, but the alternative of
8 continuing to pay 30 cents -- as I remember, you eloquently
9 described the situation, "We're going through money like hot
10 butter," as I recall, and you described it accurately.

11 That was our problem. We would go broke if we
12 kept paying 30 cents a kilowatt hour. The alternative was just
13 worse.

14 SENATOR JOHNSON: So now we're proposing to, as I
15 understand the statements that you submitted to the staff of the
16 Committee, you're involved in attempting to renegotiate some of
17 these --

18 MR. FREEMAN: Yes, sir. I'm part of the team.

19 SENATOR JOHNSON: -- these contracts.

20 So, given the secrecy that surrounded the
21 contracts initially, given the fact that you and the Governor
22 for a period of months defended them as a good deal, and now
23 apparently decided that you want to renegotiate those deals, why
24 should we have confidence, and particularly, as I understand it,
25 the audit that was done of the state, the long-term contracts,
26 indicated that, frankly, the contracts seemed to be a little
27 more favorable to the state after you stopped negotiating during
28 the period you went back to the Los Angeles Department of Water

1 and Power.

2 Why in the world should we feel a level of
3 confidence in your renegotiating what wasn't negotiated that
4 well in the first place?

5 MR. FREEMAN: Well, if you want to take that
6 point of view, you should have confidence that I'm merely one
7 member of a new team.

8 But to tell you the truth, sir, the first
9 contract we did, which was for 5.86 cents a kilowatt hour, was
10 our best contract. And I take fundamental exception to the
11 auditor's report that labeled our lowest priced contract as not
12 our best one.

13 We were trying -- I was very proud of the fact
14 that we talked the Calpine Company into coming in below 6 cents,
15 at 5.8.

16 So, we had a gun to our head. We did as well as
17 we could.

18 If the record shows that other people were better
19 at it than I am, I can live that, too.

20 SENATOR JOHNSON: Have you responded in detail to
21 that audit report?

22 MR. FREEMAN: I've been busy on the Power
23 Authority work. I haven't bothered responding to it.

24 As you well know --

25 SENATOR JOHNSON: Have you read it?

26 MR. FREEMAN: I haven't read it all. I read
27 summaries of it.

28 What you learn in public life is, if you're on

1 defensive, you're not doing important work that's on your desk
2 right then.

3 SENATOR JOHNSON: I am interested that you
4 indicated you take fundamental exception to something that
5 apparently you haven't read.

6 MR. FREEMAN: Oh, I read the summary of it, and I
7 read the newspaper stories, and I read the story in the L.A.
8 Times that you're referring to.

9 What happened was that they criticized some of
10 the conditions in some of the early contracts, which we were
11 forced to take because of our lack of bargaining situation.

12 They did not focus on what I think is the most
13 important ingredient, the price, and the first contract was our
14 best contract in terms of price.

15 CHAIRMAN BURTON: What were some of the
16 conditions that they concerned themselves with; do you remember?

17 MR. FREEMAN: I think that the conditions --

18 CHAIRMAN BURTON: I guess without objection we'll
19 have t.v. cameras.

20 Go ahead.

21 [Laughter.]

22 MR. FREEMAN: I didn't think I was in that much
23 trouble.

24 CHAIRMAN BURTON: Somebody's coming up next.
25 They're waiting for Sunne McPeak.

26 MR. FREEMAN: I believe they criticized the fact
27 that the termination clauses just let the contract die and
28 didn't get huge sums of money for breach of contract.

1 I think what the auditors failed to recognize is
2 that we were bargaining real hard to get people to sign a
3 contract. We were trying to get into the contracts then. We
4 were trying to get power at 7 cents when we were paying 30, and
5 frankly, we were not as worried about getting out as we were
6 getting in.

7 CHAIRMAN BURTON: We're paying 30 at the spot
8 market.

9 MR. FREEMAN: At the spot market, yeah.

10 CHAIRMAN BURTON: And we were paying 6 or 7 cents
11 24/7, or what?

12 MR. FREEMAN: Yes, sir. The first contract, the
13 one that they criticized in the headline as the worst, was the
14 lowest priced one. It was 5.86 cents a kilowatt hour.

15 CHAIRMAN BURTON: For 24/7?

16 MR. FREEMAN: Yes, sir.

17 CHAIRMAN BURTON: Whether we needed it or not?

18 MR. FREEMAN: Well, it was the first one. We
19 certainly needed the first one.

20 You are correct in your comments that we bought
21 too much too long, over too long a time, but that reflects the
22 totality of what was done. But the first one we certainly
23 needed.

24 CHAIRMAN BURTON: Go ahead Senator Johnson.

25 SENATOR JOHNSON: Let me shift to the question of
26 potential conflicts of interest. The Fair Political Practices
27 Commission has apparently entered into an agreement as a result
28 of 52 individuals who were energy consultants or negotiators who

1 failed to file the required Statement of Economic Interest.

2 Did you comply with the law?

3 MR. FREEMAN: Yes, sir. I've complied with the
4 law all my life and during the time that I was here.

5 I came up here on a 24-hour notice. The Governor
6 called me on January 25th, when I was in Houston on behalf of
7 Los Angeles, trying to get natural gas. And based on his
8 request and the Mayor's prompt response, I flew directly to
9 Sacramento on the 26th and went to work as a volunteer, really
10 on loan from L.A.

11 SENATOR JOHNSON: Just on that point, did the Los
12 Angeles Department of Water and Power continue to pay your
13 salary during that time that you were --

14 MR. FREEMAN: Yes, sir.

15 SENATOR JOHNSON: -- you were here as a
16 volunteer. So, you were being paid by the Los Angeles
17 Department of Water and Power.

18 MR. FREEMAN: Yes, sir, but I volunteered to help
19 the state.

20 SENATOR JOHNSON: Paid leave, okay.

21 MR. FREEMAN: And the Mayor should be thanked for
22 that.

23 SENATOR JOHNSON: You indicated that you always
24 complied with the law. Does that mean that the Simon Freeman
25 who's listed in the FPPC agreement is not you? And that you
26 were not 54 days late in filing your required Statement of
27 Economic Interest?

28 MR. FREEMAN: My full name is Simon David

1 Freeman.

2 SENATOR JOHNSON: A Simon Freeman did not always
3 comply with the law. A Simon Freeman was a minimum of 54 days
4 late in filing the required legal documents. And I believe
5 clearly that is you, and I believe --

6 MR. FREEMAN: I was working for the City of Los
7 Angeles. I filed an Economic Interest Statement there, and I
8 filed one when I came to work here.

9 SENATOR JOHNSON: Is the FPPC wrong in saying
10 that you were 54 days late, and ascribing a percentage of that
11 fine, that taxpayers will have to pay, to you? Are they wrong?

12 MR. FREEMAN: I'm giving you the truthful answer.

13 This is the first I've ever heard of this. I
14 mean, you might be right, but I have never heard of this. I
15 have never been told by the Fair Practice Committee [sic] that I
16 was late. I have not been fined.

17 And I'm not denying what you're saying. It's
18 just news to me.

19 It's entirely possible, in the rush of the work
20 that I've been doing over the last couple of years that I might
21 have filed something late.

22 SENATOR JOHNSON: You started what, about the
23 16th of April in a formal way on the state payroll?

24 MR. FREEMAN: Right.

25 SENATOR JOHNSON: But you were here and
26 negotiating billions of dollars worth of contracts from January
27 forward.

28 MR. FREEMAN: I was here from January 26 until

1 March 12th on the payroll of Los Angeles at the request of the
2 Governor, and as I testified earlier. I don't need to repeat
3 it.

4 But during that period of time, I had filed an
5 Economic Interest Statement in L.A., but I didn't file another
6 one. And I was not asked to, and I don't think there was any
7 need to.

8 SENATOR JOHNSON: I would disagree with that. I
9 think clearly you were under an obligation once you were
10 negotiating billions of dollars worth of contracts to file a
11 Statement of Economic Interest.

12 But that aside, clearly within 30 days of your
13 beginning in April, you were required. Okay, not to beat it.

14 What in your role as lead negotiator did you do,
15 if anything, to ensure that other negotiators and consultants
16 were complying with the law in terms of reporting any potential
17 conflicts of interest?

18 I mean, as you know, contracts that were
19 negotiated could wind up being null and void if there were
20 conflicts on the part of any of the people involved in arranging
21 for those contracts for the state.

22 So, what, if anything, did you do to ensure that
23 there were no such conflicts?

24 MR. FREEMAN: I did not have anyone assigned to
25 work directly for me. I came down and used the Governor's Los
26 Angeles conference room, and we worked just virtually around the
27 clock down there. And Mr. Budhraj and I were doing the
28 negotiating. And then, when we finished, the contracts were

1 taken over by the Department of Water Resources.

2 They did not -- they were not working under my
3 direction. And just to be brutally frank, I didn't feel --

4 SENATOR JOHNSON: Just did your job.

5 MR. FREEMAN: I did my job, and I was not
6 supervising them.

7 SENATOR JOHNSON: Let me ask another question
8 then. Did the Governor in any way communicate with you, or to
9 your knowledge, with any of the other negotiators emphasizing
10 the need for a scrupulous adherence to the requirements of the
11 law with respect to potential conflicts of interest?

12 Again, as I know you're well aware, these
13 contracts could wind up being voided if in fact there were such.
14 So, what did the Governor do to ensure that he knew about any
15 outside involvements of negotiators?

16 MR. FREEMAN: I don't remember exactly the date
17 of this conversation, but I remember walking down the hallway
18 with the Governor. And he was talking to me, and he says,
19 "Dave, all my life I've kept what little money I have in
20 government bonds." I think he mentioned Israeli bonds, and a
21 few things like that. And he says, "That's kept me out of my
22 conflict of interest issues." And he was giving me advice in
23 the process of that conversation.

24 I do remember that Miss Lynn Shank talked to me
25 about this subject. And I myself, you know, go back to where I
26 remember when I was running the utility in Texas, that I had
27 Barbara Jordan lecture the whole utility on ethics. And she
28 pointed out that you not only had to be honest, but you had to

1 appear to be honest.

2 SENATOR JOHNSON: I was acquainted with her.

3 CHAIRMAN BURTON: I think the question is, did
4 anybody in the Governor's office say, you've got to fill this
5 stuff out?

6 I don't think it was your responsibility to tell
7 Mike Peavy, or me, or you, or somebody else, to fill this out,
8 but I think the question is, did the legal affairs people in the
9 Governor's office say to you, you've got whatever the hell days
10 it is, 30 days from the time you're on the payroll, because I
11 really think it's questionable when you were there as a
12 volunteer whether you should or should not have done something.
13 But you have 30 days.

14 Did anybody tell you that? Not, you know, when
15 you fill out these forms, as long as it's in Israeli bonds, you
16 haven't got a conflict, unless maybe buying power from a plant.

17 The question that Senator Johnson is raising,
18 he's raised it before in other forums, is: Did anybody from the
19 administration inform you about the responsibility of, one, of
20 you doing that yourself? Did anybody say, and by the way, make
21 sure everybody else that's sitting in the room's doing it, too.

22 MR. FREEMAN: Yes, sir.

23 CHAIRMAN BURTON: Yes, sir, you heard the
24 question?

25 MR. FREEMAN: Before I was named to the Power
26 Authority, I was told in no uncertain terms by the people in the
27 horse shoe, including Mr. Imaki and the very good counsel that
28 we had to fill out these forms, and we had to --

1 CHAIRMAN BURTON: Weren't you on the pad before
2 you were on the Power Authority?

3 MR. FREEMAN: Yes, sir.

4 CHAIRMAN BURTON: Did they tell you that when you
5 first went on the pad?

6 MR. FREEMAN: I was told that I had to fill out
7 the Economic Interest form back in April.

8 CHAIRMAN BURTON: All right. I mean, they
9 addressed that to you, and you were not at that time -- I don't
10 even know if you're the supervisor. I don't know whether you
11 had a responsibility to tell anybody you knew that, but somebody
12 told you at least for your responsibility.

13 MR. FREEMAN: Yes.

14 SENATOR JOHNSON: So, what I'm really trying to
15 get at here, and I understand that maybe you didn't have, on a
16 table of organization, a responsibility that says: Make sure
17 that these forms are passed out, and everybody who's doing
18 negotiations fills out one of these forms.

19 But as someone involved in negotiation, and
20 someone aware that if a conflict of interest was later brought
21 to light that it could result in the complete nullification of a
22 contract, didn't you think that you had some responsibility, as
23 the lead negotiator, to make sure that there were, in fact, no
24 conflicts on the part of anyone negotiating the contract for the
25 state?

26 MR. FREEMAN: Back in January, the environment
27 was such that I personally, as I said, came to work here the
28 next morning after the Governor called me, and we plunged right

1 into the negotiations.

2 I did not have anyone reporting to me, and I
3 personally, of course, was keenly aware of the fact that since
4 I'd been in the public power agency anyhow, I didn't have any
5 conflicts. And I've got enough sense to know that I had no
6 business negotiating with people that I had conflicts with. So,
7 I was sensitive to that issue.

8 But if you're asking me if I lectured anyone else
9 on it, no, sir.

10 SENATOR JOHNSON: So far as you're aware, the
11 Governor didn't? I mean, it was just: Go negotiate.

12 MR. FREEMAN: I didn't have that much involvement
13 with the Governor, but what little involvement I had, that
14 subject didn't come up.

15 SENATOR JOHNSON: Let me ask you this --

16 MR. FREEMAN: Back in January. It came up --

17 SENATOR JOHNSON: January of last year?

18 MR. FREEMAN: Yes.

19 SENATOR JOHNSON: And you went on the payroll on
20 the 16th, did you say, of April?

21 MR. FREEMAN: I believe that's correct. I was on
22 the Navigant payroll until the Power Authority as a consultant.

23 SENATOR JOHNSON: More than a year has passed
24 since these contracts were signed. Can you now tell the Members
25 of the Committee who the negotiators were that were involved
26 with each of the individual contracts?

27 MR. FREEMAN: I don't have that kind of memory,
28 no, sir. I mean, I remember the contracts that I negotiated

1 with Mr. Budhraj. If I had a list of them, I could go over it.

2 SENATOR JOHNSON: Surely \$43 billion worth of
3 contracts aren't depending on how accurate your memory is.
4 Somewhere, somebody's got a list, and these are the people that
5 negotiated or participated in meetings regarding this contract,
6 and here are those who participated on this. Doesn't that
7 exist?

8 MR. FREEMAN: I'm sure that it does. You asked
9 me if I personally had that information. I don't.

10 I mean, the list of all the contracts, I think,
11 are listed in the complaint that the Public Utilities filed with
12 FERC about three weeks ago. That list is, I'm sure, available,
13 but I personally don't have it.

14 SENATOR JOHNSON: I was really asking in your
15 capacity as the lead negotiator, because that information has
16 not been made available up to now so far as I'm aware.

17 If I could turn to your Statement of Economic
18 Interests.

19 MR. FREEMAN: Yes, sir.

20 SENATOR JOHNSON: Your Statement of Economic
21 Interests indicates that you have no interests or have received
22 no economic interests apart from some reimbursement for travel,
23 and your retirement, I believe, from SMUD. Is that correct?

24 MR. FREEMAN: Yes, sir. I reported no reportable
25 economic interests.

26 SENATOR JOHNSON: I am informed that you served
27 on the board of a firm, Hydrogen Burner Technology in 2000 and
28 2001, were on the Board of Directors, and were provided with

1 stock options. Obviously, this is an energy firm.

2 Also served on the Board of Sunlight Power
3 International, and were paid member of the Board.

4 Why weren't those reflected on your Statement of
5 Economic Interests either with the State of California, or
6 previously, with the Los Angeles Department of Water and Power.

7 So, are there any others?

8 MR. FREEMAN: There are no others, and let me
9 answer your question.

10 As far as my Economic Interest Statements with
11 the state, I was no longer -- had any involvement with either of
12 those when I came here.

13 As far as my Economic Interest Statements while I
14 was in L.A., I did not receive one red cent from the Hydrogen
15 Burner Company. This was a research company.

16 I realize there was a story in the newspaper that
17 said differently, but let me explain to you, if I may.

18 SENATOR JOHNSON: Surely.

19 MR. FREEMAN: I was invited to serve on that
20 board because I was interested in fuel cell technology and
21 wanted to see what they were doing. I told all the Directors
22 and the management the first time that I was there that I would
23 not accept one penny either in compensation, either in expenses,
24 either in stock options, or in stock. And I never accepted one
25 nickel from those people.

26 And they are now defunct. The company -- the
27 research didn't work out. They didn't make it. But I left that
28 board as I came up here. And it was located in Long Beach. And

1 I had nothing to report. I didn't report it because I received
2 no economic interest.

3 Now, I realize that there was a newspaper story
4 that said that they offered stock options. I never -- I not
5 only didn't accept it, I made it very clear that I was not
6 accepting anything because I worked for the L.A. Department of
7 Water and Power.

8 I actually, it's interesting, I attended the
9 board meeting only when I was off duty. And one day when I did
10 go during the day, I took annual leave from L.A.

11 So, I did not accept anything.

12 The solar company was a company that I was
13 involved in when I was a consultant many years ago, and that
14 company is defunct. And I have not received anything from that
15 company. Its operations were entirely in developing nations.
16 It didn't make it, and it had no business whatever in the State
17 of California. This wasn't something that required any report.

18 SENATOR JOHNSON: Sunlight Power International
19 did not have subsidiaries located in the Sacramento area?

20 MR. FREEMAN: No. It had no subsidiaries. It
21 was trying to do business in Morocco, and it failed.

22 SENATOR JOHNSON: I'll accept your answer for the
23 moment, but that's not the information that I've received.

24 MR. FREEMAN: No, it happens to be the truth,
25 though.

26 SENATOR JOHNSON: I accept it.

27 MR. FREEMAN: Thank you, sir.

28 SENATOR JOHNSON: The Hydrogen Burner Technology

1 was contemplating an initial public offering. In furtherance of
2 that contemplation of an initial public offering, going public
3 with the stock, they prepared a prospectus, a document, filed,
4 and so on. It's not a California corporation, but it listed
5 that you received \$500 per meeting of the Board of Directors,
6 that you served on the Board of Directors, and that you had
7 received 5,000 shares in stock options in the company.

8 Was that document connected with their initial
9 public offering wrong?

10 MR. FREEMAN: It was wrong if it said that I
11 received it.

12 I believe that the Board authorized 5,000 shares
13 that I could receive, but I affirmatively refused them, and I
14 did not accept -- not only didn't accept the shares, I didn't
15 accept the options.

16 And I have a letter, I might say, from another
17 member of the Board that confirms that at the first meeting of
18 the Board, I made that declaration.

19 I was there on the Board to learn about it, and
20 not to make any money. I know the difference between making
21 money and not making money.

22 SENATOR JOHNSON: I just have one more question
23 along these lines.

24 Your partners in Sunlight Power International, I
25 understand, were also involved in a company known as Atlantis
26 Energy, and that Atlantis Energy did, in fact, have relations
27 with the Los Angeles Department of Water and Power.

28 Is that accurate or inaccurate?

1 MR. FREEMAN: It's not accurate in the sense that
2 I had no partner in Atlantis. Atlantis --

3 SENATOR JOHNSON: That's not my understanding.
4 My understanding is that you did in fact have partners in the
5 Sunlight Power International, and that the principals, your
6 fellow folks in that, were involved in a second company,
7 Atlantis Energy. And that Atlantis Energy had dealings with the
8 Los Angeles Department of Water and Power.

9 MR. FREEMAN: When I was -- in 1996, when I was
10 a consultant, we formed this company with the naive notion of
11 the people of the world that didn't have electricity, that we
12 could economically bring solar power to these villages, and
13 that they could pay for it over time.

14 And it just didn't work because -- for a lot of
15 reasons.

16 There was one person who was a stockholder in
17 Atlantis -- in Sunlight Power that contributed, I think, some
18 small amount of money. He was -- I was a sweat equity owner in
19 it. This guy put some real money in it.

20 And what his other business -- and one of his
21 other businesses was Atlantis, but I had no connection with
22 Atlantis. And he was merely a stockholder, and we all went
23 broke together on that deal.

24 SENATOR JOHNSON: You've indicated that you
25 didn't report these involvements on your Statement of Economic
26 Interest, either with the State of California or with the Los
27 Angeles Department of Water and Power.

28 Did you communicate to the Governor these

1 involvements, or were your conversations with the Governor just
2 about Israeli bonds, or whatever?

3 MR. FREEMAN: I didn't communicate these long
4 past nonprofit ventures of mine, no, sir. I didn't see any need
5 to. They didn't exist when I came here, and there was nothing
6 wrong with --

7 SENATOR JOHNSON: You didn't serve on the Board of
8 Hydrogen Burner Technologies in 2001?

9 MR. FREEMAN: I left the Board as I came up here
10 in April. I resigned.

11 SENATOR JOHNSON: The requirements, I believe, of
12 the financial disclosure are that you have to indicate financial
13 involvements you'd had in the past 12 months.

14 MR. FREEMAN: But there was no economic interests
15 to report.

16 I had not -- I didn't get a red cent from those
17 people. There was nothing to report.

18 I've also served on the board of a lot of other
19 nonprofit things.

20 SENATOR JOHNSON: You know, that's kind of a
21 question that I have to admit is going through my mind.

22 If you made a decision that these relationships
23 didn't need to be reported, what others might you have had that
24 you also felt need not have been reported and that we don't know
25 about it?

26 MR. FREEMAN: I'm a Member of the Board of the
27 Alliance to Save Energy, which is an organization that consists
28 of Senator Bingham and several other U.S. Senators. And it's

1 been going on in Washington for a number of years.

2 I get no money from it. I get no expenses, but I
3 serve on that Board.

4 But I read very carefully the Economic Interests.
5 The purpose of the statement is to report anything that
6 conceivably might be a conflict, and I have. I have no
7 conflicts of interest.

8 I don't own any private company stock or anything
9 that would have an interest in a company that I'd have a
10 conflict with.

11 SENATOR JOHNSON: Put yourself in the Committee's
12 shoes. I mean, we're being asked once again to confirm you to a
13 position of enormous, not just great trust, enormous trust. Not
14 just the \$220,008, but your ability to influence the expenditure
15 of billions, billions of dollars of tax money.

16 I have a young grandson who just born seven weeks
17 ago today. And my grandson, should he stay in California when
18 he's an adult, is still going to be dealing with the results of
19 these contracts.

20 So, I think it's extraordinarily important, this
21 hearing, and put yourself in our shoes, put yourself in my
22 shoes. Someone who has indicated that he just didn't file.
23 Didn't do what the law required, and didn't concern himself with
24 whether or not his fellow negotiators might have had any
25 conflicts of interest. That seemed sort of fundamental to the
26 job you were asked to do.

27 MR. FREEMAN: Sir, I have done what the law
28 requires, and I am concerned about the ethics of everyone. And

1 I've done what's required of me.

2 I'm not responsible for the ethical or unethical
3 behavior of other people that didn't serve under me, and over
4 whom I had no supervisory responsibility.

5 I will say this to you, sir. That I think the
6 second meeting of the California Power Authority, we invited the
7 Attorney General and his people to come in, and at the Board
8 meeting, to give us an hour-and-a-half briefing on all the laws
9 in this state so that we all knew -- that we didn't just read
10 the documents, that we sat there and listened to them.

11 And I take the ethical concerns very seriously.
12 I'd like to think that I have 76 years of ethical behavior
13 behind me.

14 SENATOR JOHNSON: I don't want to beat this
15 forever, Mr. Chairman.

16 You indicated that when you went to work, came
17 back the second time, after going back for a short period of
18 time to the Los Angeles Department of Water and Power, that you
19 were advised that you had a responsibility to fill out these
20 Conflict of Interest forms.

21 MR. FREEMAN: Yes, sir. Economic Interests.

22 SENATOR JOHNSON: When you went to work on the
23 16th of April, and the law is very clear that you've got 30
24 days, why did it take until July? Why did it take until July
25 10th?

26 MR. FREEMAN: I don't recall that it took until
27 July 10th, but if that's what the records shows --

28 SENATOR JOHNSON: The record not only shows that

1 you didn't file it until the 10th of July. The record clearly
2 also establishes that a fine is being levied for your failure to
3 do so, and the taxpayers of California are going to pay that
4 fine, not you.

5 It seems to me, wouldn't you agree that you have
6 some moral responsibility to set a higher tone than that?

7 MR. FREEMAN: Well, I have tried my best to set
8 the highest possible tone. And if I was late in filing that, I
9 deeply regret it, but I'm not aware that I was late, and no one
10 has told me about a fine. No one has brought this to my
11 attention until you did just a few minutes ago.

12 I will do what's appropriate.

13 SENATOR JOHNSON: Let me shift gears for just the
14 last few questions, and that's on the subject, because you
15 referred to negotiating with gougers. And the gougers had a gun
16 at your head, and had you over a barrel, and so on.

17 For most of last year, you consistently indicated
18 that the Los Angeles Department of Water and Power sold power to
19 the State of California at 15 percent over cost, cost plus 15.

20 MR. FREEMAN: Those were my instructions to the
21 staff, yes, sir.

22 SENATOR JOHNSON: Then Coopers and Librand did an
23 audit of that and determined that, in fact, the charge was 56
24 over cost, and that the Los Angeles Department of Water and
25 Power charged substantially more than, for example, Enron.

26 I do remember the quote from Mr. Moviglio, that
27 anybody who wears a cowboy hat probably has a bandanna for a
28 mask, or words to that effect.

1 MR. FREEMAN: I'm taking this very seriously.

2 SENATOR JOHNSON: The Los Angeles Department of
3 Water and Power was charging more than those neighborly folks at
4 Enron.

5 MR. FREEMAN: Well, the neighborly folks at Enron
6 never got a contract with us, because I stared them in the eye
7 and said, you want too much. And also, they had the,
8 interestingly, the audacity to say that we won't sign with you
9 because we don't trust your credit.

10 History has kind of proven the opposite.

11 But in any event, I want to answer your
12 question. I did have instructions to the staff to sell at cost
13 plus 15 percent. I was not the final authority on what is done
14 at L.A. I was the General Manager.

15 I had the then-Mayor and his commissioners who
16 were putting extreme pressure on me, first of all, during the
17 height of the crisis, to pull the plug and not sell power to
18 people who couldn't pay for it right away. I resisted that. I
19 told them that if they wanted to hold a meeting under the Open
20 Meetings law, and three Commissioners ordered me to do that in
21 public, and the City Council didn't veto it, I'd either resign
22 or do it. But I resisted that.

23 And I was gone, you know, from January 26th to
24 March 12th.

25 I am told by the people at the Department of
26 Water Resources that while I was gone, they tried to get more
27 money. And I think that there was pressure on the staff from
28 higher ups to define costs in an elastic way. And I have

1 said publicly, and I will say it again, that if in fact L.A.
2 charged more than cost plus 15 percent, they ought to give the
3 money back. And actually, the former Mayor, Dick Riordan, has
4 said the same thing.

5 SENATOR JOHNSON: When did the folks at the
6 Department of Water Resources tell you this?

7 MR. FREEMAN: When I asked them the other day. I
8 was just curious if they noticed any difference, because I was
9 upset, just as you're upset, when this audit report came in and
10 showed that despite my orders to sell at cost plus 15 percent,
11 they'd gotten more. And I wondered how that could happen.

12 And the Department of Water Resources staff
13 people told me that they saw that the staff asked more.

14 There are other reasons. Part of the time, you
15 know, this crazy bidding system we had in this state gave
16 everybody the market clearing price, no matter what you bid.
17 So, if the gougers come in got the deal at a higher price,
18 everybody that bid got that higher price.

19 Now, we didn't turn any money back. When the
20 state offered us more money than we bid, we took it.

21 CHAIRMAN BURTON: Can I ask a question.

22 SENATOR JOHNSON: Go ahead.

23 CHAIRMAN BURTON: So there was a process where if
24 you bid 10 cents, Senator Bowen bids 30 cents, all of a sudden
25 you're getting 30 cents because she's getting 30 cents?

26 MR. FREEMAN: Yes, sir.

27 CHAIRMAN BURTON: Whose process was that, might
28 one ask?

1 MR. FREEMAN: That was laid down by the old
2 Public Utilities Commission, and that was the bidding process
3 that we had in the state. It was crazy.

4 CHAIRMAN BURTON: I would think.

5 MR. FREEMAN: But it's the truth. That's the way
6 it worked for a while.

7 We finally got that changed.

8 CHAIRMAN BURTON: Then on the other thing, you
9 said that somebody gave you orders to do cost plus 15 percent?

10 MR. FREEMAN: No, sir. That was --

11 CHAIRMAN BURTON: Your idea?

12 MR. FREEMAN: -- my idea.

13 CHAIRMAN BURTON: Doesn't the L.A. charter
14 mandate that Water and Power's got to make the most money they
15 can make?

16 MR. FREEMAN: That was an argument that was
17 advanced, frankly, by Mayor Riordan. And I said that, you know,
18 if you're a want-to-be gouger, you have to go out in public, and
19 the City Council was staying the opposite. And I said I wasn't
20 going to do it unless the Mayor and the --

21 CHAIRMAN BURTON: The City Council was saying the
22 opposite of what?

23 MR. FREEMAN: They did not want to see us
24 gouging.

25 CHAIRMAN BURTON: They did not. That's all
26 right.

27 SENATOR JOHNSON: So, you were distressed by the
28 revelations in this audit?

1 MR. FREEMAN: Yes, sir. I am surprised.

2 SENATOR JOHNSON: Then why is it that when the
3 Los Angeles Times asked you about it, you apparently replied,
4 "I'm not embarrassed about it. It says nothing more than
5 there's enterprise at the DWP." Los Angeles Times, September
6 10th, 2001.

7 MR. FREEMAN: Well, I probably was too
8 defensive. That was probably not an appropriate reaction.

9 You know, sometimes when somebody calls you on
10 the telephone, you don't always say exactly what you'd like to
11 see said in print.

12 I once had a general manager that came into me and
13 said, when I was Chairman of the TVA Board, he said,
14 "Mr. Chairman, I misquoted myself."

15 [Laughter.]

16 MR. FREEMAN: And I had to love the guy, but
17 that happens from time to time.

18 SENATOR JOHNSON: I'm having a tough time
19 squaring that you were shocked and amazed when you continued to
20 defend.

21 I mean, did you or did you not write a letter to
22 Members of the United States Senate in July of last year
23 reasserting that the Los Angeles Department of Water and Power
24 was selling power to the state for 15 percent plus cost?

25 MR. FREEMAN: Yes, sir, because I thought that
26 was true.

27 SENATOR JOHNSON: How do I square that then when
28 you're saying, gee, you were under enormous pressure, and it was

1 all Mayor Riordan's fault?

2 MR. FREEMAN: Sir --

3 SENATOR JOHNSON: If I may finish the question.

4 After you had left the Los Angeles Department of
5 Water and Power, and were a state employee, and Mayor Riordan
6 and members of the commission no longer had any leverage over
7 you whatever, for a period of months you continued to defend the
8 practices of the Los Angeles Department of Water and Power.

9 MR. FREEMAN: Because they came -- they told me
10 that they were continuing on the cost plus 15 percent basis.
11 And I thought that they were.

12 One does have a tendency to try to defend the
13 organizations that you work for, even after you leave. It's not
14 unnatural.

15 But the truth of the matter is that we had a cost
16 plus approach. It turns out that costs are elusive. And I
17 think I know what happened now; the guys got pressure from on
18 top to get more money, define costs in a way that kind of
19 stretched the word a bit.

20 And if they did, and if that audit which they
21 commissioned shows that we made more money than we said we're
22 going to make, they ought to give the money back. And Dick
23 Riordan agrees with me on that. And that's kind of where I end
24 up standing.

25 CHAIRMAN BURTON: Now that he's no longer Mayor.

26 MR. FREEMAN: That's true.

27 But I was proud of the fact that our blue-collar
28 workers put a thousand megawatts of old power plants back on

1 line in '97 and '98. We got them up and running. They were
2 given up for dead. And so, we got a thousand megawatts of spare
3 capacity by the enterprise and ingenuity of the city workers at
4 Los Angeles. We had a thousand megawatts. They kept a million
5 homes lit during the dark days of the energy crisis. And we
6 made money on it.

7 And that's what I was referring to, enterprise.
8 We, hopefully, only made cost plus 15 percent. If we made more,
9 we ought to give it back.

10 But there was enterprise in Los Angeles that
11 helped not only L.A., but helped the state out by providing some
12 power to minimize the blackouts. And that's what I was proud
13 of.

14 SENATOR JOHNSON: Let me ask you this. If
15 representatives from private power merchants were here, would
16 they make a presentation much different than that that you've
17 just made?

18 You've described them as gougers, and I'm not
19 necessarily disagreeing with you.

20 But I'm saying that it would appear to me that
21 among the worst gougers was the Los Angeles Department of Water
22 and Power.

23 And again, we're being asked to confirm you to
24 one of the most important jobs, second perhaps only to the
25 Governor. I mean, \$43 billion worth of contracts with a
26 possibility that some of those contracts may go up, as well as
27 renegotiating, hopefully, downward.

28 We're paying you \$220,000 a year, and you're

1 saying you didn't really have that much of a handle on what the
2 Department that you headed was charging, and that you continued
3 to defend it for months after, and continued to defend it after
4 an independent audit found that they were, in fact, gouging more
5 than Enron, as an example. That's rhetorical.

6 Last question. Is it true that you said a blind
7 pig could make money in this market?

8 MR. FREEMAN: Yes, and let me tell you the
9 context of that.

10 We had a pump storage plant. It's a plant that
11 pumps water up the hill at night, and lets it run back down the
12 next afternoon.

13 During the early days of deregulation, the price
14 of electricity in the middle of the night was a big fat zero.
15 In fact, we got power one night, and they paid us one mill for
16 it because the nuclear plants --

17 SENATOR JOHNSON: Please, take my power.

18 MR. FREEMAN: Well, the nuclear plants have to
19 run all night, and they had more power than the load. We took
20 this next-to-nothing electricity in the middle of the night and
21 pumped the water up the hill, and ran it back down, and sold it
22 for a reasonable price of 3, 4, 5, 6 cents.

23 I went out to our marketing people, and I was
24 boosting morale. And I was teasing those guys. I said -- you
25 know how you do. I said, "You guys, even a blind pig can make
26 money doing this." And we got blind pig T-shirts which we
27 handed out, and the guys loved it, because they knew they were
28 doing a good job.

1 SENATOR JOHNSON: I hear they were popular at
2 Enron as well.

3 MR. FREEMAN: Well, with all due respect, sir,
4 the Los Angeles Department of Water and Power has done one hell
5 of a job for the City of Los Angeles, and Enron is dead.

6 So, I don't think you really want to make that
7 comparison.

8 SENATOR JOHNSON: Oh, I'm making a direct
9 comparison.

10 But I am arguing that we ought to hold public
11 utilities and public officials to at least the standard that we
12 hold private power merchants.

13 MR. FREEMAN: And I agree with you.

14 SENATOR JOHNSON: And frankly, I think we ought
15 to hold you and those who are in the public power arena to a
16 higher standard, and certainly not a lower standard, than we
17 hold those folks.

18 I have know further questions at this time,
19 Mr. Chairman.

20 CHAIRMAN BURTON: Senator Romero.

21 SENATOR ROMERO: Thank you.

22 Let me just ask again on the question of the
23 long-term contracts.

24 Before the Legislature, I supported the concept
25 of long-term contracts, believing that it would get us out of
26 the spot market.

27 Let me ask you, though, what was the discussion,
28 and was there a mandate sent at all? Was the question on the

1 either/or, the whole issue of the gun at your head, was it
2 simply the issue of keep the lights on, that's the point of
3 negotiating the contract?

4 Or, was the issue, get the best price possible
5 for the people of the State of California?

6 And was that a discussion that was amongst you
7 and the other negotiators? Was it ever reconsidered when that
8 gun was there at your head?

9 MR. FREEMAN: The legislation that was passed on,
10 I think, February the 1st had extensive debate in the
11 Legislature. At one time there was 5.5 cent ceiling in the bill
12 that went through the Assembly. The bidding process that went
13 on before I got here, bids came in at 6.9 cents, and it was
14 pretty obvious that at five-and-a-half cents, we weren't going
15 to be able to buy anything.

16 As I recall, the Chairman Bowen and the others
17 took that ceiling out of the bill. So, when I came up here and
18 started negotiating, it was public knowledge that we couldn't
19 buy power for much less than 7 cents.

20 The bill was passed, which was a mandate to do
21 long-term contracts and try to get it at that price rather than
22 the 30 cents that we were paying on the spot market. Also, to
23 accelerate the construction of power plants.

24 People have forgotten. Every one of these
25 long-term contracts, 70 percent of them, brought new iron and
26 steel to be built. So, our purpose was both to reduce the price
27 immediately, and we, of course, didn't get all that much power
28 the first year, but also to get power plants built and to bring

1 the price down over time, and have enough power to avoid
2 blackouts over time. Frankly --

3 CHAIRMAN BURTON: Excuse me. I must have
4 misheard the questions.

5 What I thought she asked was, was the direction
6 to keep the lights on, or the question to get the best price?

7 MR. FREEMAN: It was to bring the price down
8 immediately.

9 CHAIRMAN BURTON: Not to keep the lights on?

10 MR. FREEMAN: But in the long term, to build
11 power plants so the lights would stay on.

12 CHAIRMAN BURTON: So initially, the initial
13 direction wasn't: Keep the lights on at any cost. It was:
14 Bring the price down?

15 MR. FREEMAN: The lights, yes, sir. The problem
16 was --

17 CHAIRMAN BURTON: That was either or.

18 MR. FREEMAN: The money was going out the door at
19 the time --

20 CHAIRMAN BURTON: Dave, it's kind of a simple
21 one, not money out the door or down the toilet.

22 The question that Senator Romero asked: Was the
23 direction, keep the lights on?

24 In other words, what's my first thing? Keep the
25 lights on. What's my first thing? Drive the price down.

26 Which was it.

27 MR. FREEMAN: Drive the price down.

28 CHAIRMAN BURTON: And if the lights went off,

1 that was too bad?

2 MR. FREEMAN: They were buying the power to keep
3 the lights on at whatever price there was on the spot market,
4 but to get long-term --

5 CHAIRMAN BURTON: No, we had blackouts, as I
6 recall.

7 MR. FREEMAN: Yes, sir. But --

8 CHAIRMAN BURTON: So, the direction was drive the
9 price down?

10 MR. FREEMAN: Drive the price down.

11 CHAIRMAN BURTON: Okay.

12 SENATOR ROMERO: And actually I appreciate that,
13 because I'm a little bit confused because I know when we did
14 meet in my office earlier, at least what was conveyed to me was,
15 the initial priority was, don't have the blackouts.

16 So, perhaps I didn't ask as much as of the
17 question as I should have in the office, but that's what I
18 thought was the mandate.

19 MR. FREEMAN: It's pretty clear that we were going
20 to pay whatever price was needed to keep the lights on, but the
21 whole idea was to bring the price down because the money was
22 going too fast.

23 SENATOR ROMERO: But that was, again, at whatever
24 price to keep the lights on.

25 And I'm not arguing with that. I'm just trying
26 to get clarification as to what the discussion was, sort of the
27 philosophy in negotiating the contracts.

28 MR. FREEMAN: My instructions were to try to get

1 the contracts as rapidly as we could so that we could convert
2 some of the 30-cent power to 7-cent power as quickly as we
3 could.

4 The spot market was 30 cents a kilowatt hour.
5 And so, the idea was to try to go from spot to long as rapidly
6 as we could. And actually, over a year's time, the strategy
7 worked.

8 The problem was that these long-term contracts
9 were entered into at a time when they had us over a barrel, and
10 we're going back now and saying, we want a just and reasonable
11 price.

12 CHAIRMAN BURTON: Do you think we ought to go to
13 court on those contracts?

14 MR. FREEMAN: I believe in a sense we have.

15 CHAIRMAN BURTON: No, we haven't. We've gone to
16 FERC. We haven't gone to court.

17 MR. FREEMAN: I would leave that decision to the
18 lawyers.

19 CHAIRMAN BURTON: You would leave what decision
20 to the lawyers?

21 MR. FREEMAN: Whether to go to court.

22 Some of the contracts have arbitration clauses,
23 so I don't think it's legally possible to go to court --

24 CHAIRMAN BURTON: Well, if --

25 MR. FREEMAN: -- go to arbitration.

26 CHAIRMAN BURTON: -- you're renegotiating, if
27 you're going to get the contract renegotiated, you're trying to
28 renegotiate all the terms, including the terms that said you had

1 to go to arbitration.

2 So you go into court on the basis that you did
3 not enter into just and reasonable contracts because it was an
4 unjust and unreasonable point of time.

5 MR. FREEMAN: Yes, sir. If there is a legal
6 theory under which we could go to court, I would have to say --

7 CHAIRMAN BURTON: What's your theory to go to
8 FERC? There's got to be a theory or they ain't going.

9 I don't think that FERC's a court of equity.

10 MR. FREEMAN: No, but the statutes of the United
11 States say that the rights have to be just and reasonable. And
12 we have every right to take the contracts to FERC.

13 CHAIRMAN BURTON: Well, if they say that, then
14 you've got the right to go to court. Just a thought.

15 MR. FREEMAN: I don't have an -- I have an
16 opinion that we ought to sue them every way we can.

17 CHAIRMAN BURTON: That includes going to court.

18 MR. FREEMAN: If that's legal. I'm not trying to
19 practice law.

20 CHAIRMAN BURTON: It's never illegal to go to
21 court, unless of course you would be a vexatious litigant.

22 MR. FREEMAN: I think that the most aggressive
23 stand that we can take is what we should take, and I have reason
24 to think that that's under way. The Attorney General, I think,
25 filed something this morning, another series of lawsuits.

26 CHAIRMAN BURTON: He's suing on overcharge. I
27 don't know if he's suing for renegotiation.

28 I'm sorry, Senator Romero.

1 SENATOR ROMERO: Just my last question. And
2 again, I share some of the confusion.

3 The authority was created at the time of a threat
4 of blackouts. Blackouts did occur.

5 What's your assessment now? We're trying to
6 renegotiate the contracts. Suppose we're successful. Any
7 threat of blackouts happening again and we're back in the same
8 spot?

9 MR. FREEMAN: I think there's every reason to
10 think that history can repeat itself if we simply leave it up to
11 the Enrons of the world. They have learned that a short ration
12 is what makes them big money.

13 These new power plants are drying up. They're
14 dying like flies. I mean, the number has gone from 30,000 more
15 megawatts down to 13. And I don't know that there will be very
16 many power plants completed that don't have a long-term
17 contract.

18 These folks are not risk takers. They talk a
19 good game about taking risk, but they want a sure thing.

20 And I think the Power Authority is more important
21 than ever to speak softly, but to be ready to step in if the
22 plants are not built.

23 I don't think that the future is clear. We do
24 not have a 15 percent reserve as yet. We have barely enough for
25 next summer. And we have FERC threatening to go on a sit-down
26 strike again on September the 30th, when their mitigation
27 expires.

28 CHAIRMAN BURTON: And that's who we're appealing

1 to.

2 SENATOR ROMERO: No other questions.

3 CHAIRMAN BURTON: Senator Knight.

4 SENATOR KNIGHT: Thank you, Mr. Chairman.

5 I'd like to know for one thing how is it that
6 you, as the manager of the DWP does not know what the cost of
7 producing your electricity is?

8 MR. FREEMAN: Well, as a matter of fact, I had a
9 pretty good idea of what the cost was.

10 SENATOR KNIGHT: Does it vary that much?

11 MR. FREEMAN: We reduced the debt while I was
12 there by \$3 billion.

13 SENATOR KNIGHT: Does the cost of producing
14 electricity vary that much?

15 MR. FREEMAN: It does. It depends a lot on the
16 price of natural gas which you use. And during that period of
17 time, people have forgotten that the price of natural gas was up
18 around --

19 SENATOR KNIGHT: I understand that, but you know
20 then, based on the price of natural gas today what it's going to
21 cost you to make electricity today; don't you?

22 MR. FREEMAN: Yes, sir. And I know that --

23 SENATOR KNIGHT: Don't you know every day what
24 it's going to cost you to make electricity?

25 MR. FREEMAN: Pretty much.

26 SENATOR KNIGHT: I would think so.

27 How many contracts were negotiated?

28 MR. FREEMAN: All together?

1 SENATOR KNIGHT: Yeah.

2 MR. FREEMAN: There were at least three, I think,
3 of some size. I participated in about nine or ten.

4 SENATOR KNIGHT: Thirty contracts. And the only
5 contracts I've heard about right now are the ones that were
6 negotiated for somewhere between 5 and 6 cents.

7 MR. FREEMAN: They were between 5 and 7 cents.

8 SENATOR KNIGHT: Okay, 5 and 7 cents.

9 So, what's the big deal about that? Those are
10 good contracts, aren't they?

11 MR. FREEMAN: Well, they were good contracts when
12 they were entered into, but the price is higher than a just and
13 reasonable price can be. And we're going to FERC to try to
14 see --

15 SENATOR KNIGHT: Wait, wait. Five to seven
16 cents, isn't that a good deal for a contract?

17 MR. FREEMAN: Not when the price of gas is back
18 down to what it is, and where the cost of service basis, you
19 ought to be able to do that contract today for about five cents.
20 The difference between five and six --

21 SENATOR KNIGHT: Yes, that's not that much
22 different between five and seven.

23 MR. FREEMAN: Well, it's 20 percent, and --

24 SENATOR KNIGHT: Yeah, okay.

25 MR. FREEMAN: -- and 20 percent of 43 billion is
26 \$8 billion.

27 SENATOR KNIGHT: I understand. Sometimes we get
28 to that figure, seventeen-and-a-half billion, maybe.

1 But I'm talking about, what was the maximum we
2 contracted for?

3 MR. FREEMAN: If you get into peaker plants,
4 which operate only part of the time, the cost goes up.

5 SENATOR KNIGHT: What was the maximum contract we
6 contracted for?

7 MR. FREEMAN: I think that some of the costs of
8 peaker power got up to around 15 cents.

9 SENATOR KNIGHT: That's all?

10 I've heard of numbers in the neighborhood of --
11 what's the average of the contracts today?

12 MR. FREEMAN: Around 7 cents a kilowatt hour. If
13 you average them all together, they're at the 6.9, maybe a
14 little bit lower than that, but around 6.9 cents, which is a
15 number that was out there in the public domain when we
16 negotiated the contracts.

17 What has happened is that we have won the battle
18 in the marketplace. The market price is down to 3 cents, and
19 people are rightly saying --

20 SENATOR KNIGHT: One other question.

21 CHAIRMAN BURTON: Two interrupts.

22 The market price is down to three, and we're
23 averaging seven, which means we've got some at God knows what.

24 SENATOR KNIGHT: Yeah.

25 MR. FREEMAN: Yes, sir. And that's why we need
26 to go -- we have gone to FERC, and we need to go to court if
27 FERC turns us down and try to get a just and reasonable rate,
28 just as you said.

1 SENATOR KNIGHT: What's the spot market today?

2 MR. FREEMAN: Three cents.

3 SENATOR KNIGHT: Three cents?

4 MR. FREEMAN: Yes, sir.

5 CHAIRMAN BURTON: What the hell would a long-term
6 contract be?

7 What would a long-term contract be today? A
8 penny, penny-and-a-half?

9 MR. FREEMAN: No, it would be longer than that
10 because I think the market foresees natural gas prices going
11 back up again in the future.

12 I think you could get a long-term contract -- I
13 haven't tested it -- for about five cents.

14 CHAIRMAN BURTON: So the spot --

15 MR. FREEMAN: The spot is lower because the spot
16 gets down to the marginal --

17 CHAIRMAN BURTON: So the spot is what it is on
18 the spot.

19 MR. FREEMAN: Yeah, there's no capital. It's a
20 dump price. What you can get. Just a little bit more than the
21 gas cost.

22 CHAIRMAN BURTON: Is it true that we have at some
23 times a surplus of power at prices, let's say, averaging seven,
24 and people can buy it at three, so we're in a position we got to
25 gargle it, dump it, or what? What do you do if you've got more
26 than --

27 SENATOR JOHNSON: Even a blind big can lose
28 money, too.

1 CHAIRMAN BURTON: What would you do in that
2 situation?

3 MR. FREEMAN: Well --

4 CHAIRMAN BURTON: We've got more than we need.

5 MR. FREEMAN: I understand.

6 We're still needing to buy power for the peak
7 hours. But around-the-clock power, some hours have too much,
8 and we sell it in the marketplace, and sometimes at a loss.

9 But in the olden days, when you had 15 percent
10 reserves, the power plants just sat there. There wasn't a
11 market, and you got no money for your reserve capacity.

12 So, it's not necessarily bad that we have a
13 little bit more than we need. You can't possibly hit it exactly
14 on the money.

15 CHAIRMAN BURTON: It ain't good if you're buying
16 something for a dime and selling it for a nickel.

17 MR. FREEMAN: No, but it's a little bit, and if
18 it's because you wanted to have -- be sure you had enough --

19 CHAIRMAN BURTON: I understand.

20 I'm sorry, Senator Knight.

21 MR. FREEMAN: -- not the end of the world.

22 SENATOR KNIGHT: We entered into these contracts
23 sometime ago, and as far as everybody knows, they were good
24 contracts from the standpoint of legality of a contract. They
25 may not have been good for --

26 MR. FREEMAN: Yes, sir.

27 SENATOR KNIGHT: -- the price that we were
28 paying, but they were fair and equitable contracts at the time.

1 MR. FREEMAN: Yes, sir, they were fair and
2 equitable, but they were --

3 SENATOR KNIGHT: But that's the best you could
4 do, so that --

5 MR. FREEMAN: Yes, sir, the best we could do.

6 SENATOR KNIGHT: You all agreed to them, so that,
7 you know it's a two-party contract.

8 What justification today do we have to
9 renegotiate those contracts?

10 MR. FREEMAN: The Federal Power Act, which says
11 in plain English that rates shall be just and reasonable, and
12 where people who have done a transaction have every right to
13 take it to FERC and say, these people had market power on us.
14 They had us over a barrel, in a sense. We had to sign up,
15 because otherwise, we'd be paying 30 cents.

16 We paid seven, but the right price ought to be
17 five, and that's what the law gives us the right to do, and that
18 is what we are doing.

19 SENATOR KNIGHT: So, are we renegotiating the
20 contracts?

21 MR. FREEMAN: We're trying to renegotiate, but we
22 also have taken the matters to FERC so that --

23 SENATOR KNIGHT: Wait a minute. I get confused
24 at times when you tell me, yeah, you can do this, and then you
25 say: That's what we're trying to do.

26 You say there's justification for renegotiating
27 the contracts. Are we renegotiating the contracts?

28 MR. FREEMAN: Yes, sir, but it takes two to

1 tango. And I'm just trying to tell you that we haven't reached
2 final agreement with the people in the renegotiations.

3 We are putting pressure on them by taking the
4 cases to FERC.

5 SENATOR KNIGHT: I guess the reason I asked the
6 question is because I wasn't aware that we were in the process
7 of renegotiating.

8 MR. FREEMAN: Oh, yes, sir.

9 SENATOR KNIGHT: Okay, so we're in the process of
10 renegotiating all the contracts.

11 MR. FREEMAN: Yes, sir.

12 SENATOR KNIGHT: I understand the Attorney
13 General is suing the private companies?

14 MR. FREEMAN: He's bringing separate actions for
15 what he considers violation of the law.

16 SENATOR KNIGHT: Is that only for private
17 companies, not public utilities?

18 MR. FREEMAN: I'm not familiar with exactly all
19 the entities that he's suing, but I'm not aware that he is suing
20 any of the municipalities; I don't think so. He may not have a
21 legal ground to do that.

22 SENATOR KNIGHT: Okay.

23 Thank you.

24 SENATOR JOHNSON: Just to follow up.

25 What again is your notion of what a legal basis
26 to overturn these would be? That they were somehow not fair and
27 equitable?

28 MR. FREEMAN: Section 206 --

1 SENATOR JOHNSON: I mean, I will concede, in fact
2 I said at the time, and I say again here today, they were bad
3 deals.

4 But that's different from whether they were
5 fair.

6 Of course again, you and the Governor, beginning
7 to the 5th of March of last year, and for many months
8 thereafter, said that they were a great deal. "We're proud of
9 those contracts."

10 So again, the first question that comes to mind
11 is, why weren't you just straight with the people of California?
12 Did you, like Jack Nicholson in "A Few Good Men," think they
13 couldn't handle the truth? You couldn't say to them, "Look, we
14 got had. These were a bad deal. We had a gun to our head; we
15 were over a barrel, but it's the best we could do, and it kept
16 the lights on."

17 Why didn't you just say that instead of, "We're
18 proud of these contracts."

19 And again, the Governor, "They have done it."
20 You and your negotiators "have done it in an extraordinarily
21 thoughtful and savvy manner, and every Californian is the
22 beneficiary of it. We are nailing down the power at affordable
23 prices, and I can't thank David and VJ enough."

24 The Governor, as recently as his State of the
25 State speech in January, again said that these long-term
26 contracts were a part of his, the keystone, of his energy
27 policy.

28 So, what is the theory? Because believe me, if

1 there is one, I would hope it would be pursued. What is the
2 theory that says: We've got Mr. Simon David Freeman as a chief
3 negotiator. We've got his friend, Mr. Budhraj, and we're
4 paying Budhraj \$6.2 million to negotiate it. And they've got a
5 team of experts, at least experts in the energy field if not in
6 filling out Conflict of Interest Statements.

7 I mean, this is not like some elderly lady who's
8 been sold some aluminum siding she doesn't really need. You
9 were a sophisticated group. And again, to use Governor's
10 phrase, "extraordinarily thoughtful and savvy."

11 So, what's the legal theory? How did you get
12 taken if you were so smart?

13 MR. FREEMAN: When one side has market power over
14 the other side, when they are in a quasi-monopoly situation,
15 when our alternative at the time is 30 cents, 7 cents looked
16 pretty good to us.

17 But that doesn't mean that 7 cents is just and
18 reasonable. The statute guarantees every customer the right to
19 a just and reasonable rate.

20 And we're going to FERC now and saying: We
21 accepted the 7-cent price because at the time it was just a
22 whole lot better than 30 cents, but we -- and the reason that we
23 defended the contracts for a long time, the market didn't all of
24 a sudden go from 30 cents to 3 cents, sir. It took the
25 long-term contracts. It took the conservation program. It took
26 the Governor beating the table and saying, "FERC, you're on a
27 sit-down strike," and the new President put some better people
28 on FERC as a result of that. They came in with a mitigation

1 plan.

2 It took a whole bunch of things that this
3 administration, in cooperation with the Legislature, did over
4 the last year. It was the Legislature that put up the money for
5 conservation, that gave us the authority for the long-term
6 contracts. All together, it's kind of worked, sir.

7 And now the contracts look like they're too high
8 because we beat the market price down to 3 cents. And it helps
9 make our case that we got really took. We didn't realize how --
10 how bad the overcharges were until the market showed us that
11 there's a 3-cent price out there.

12 So, we're going back to FERC and saying, we want
13 a just and reasonable price under the law. We have that -- it's
14 our legal right.

15 SENATOR JOHNSON: Let me ask you this --

16 MR. FREEMAN: Let me put it this way. We're a
17 victim, and we're asserting our civil rights, our right under
18 the law to just and reasonable rates.

19 SENATOR JOHNSON: Do you think that the fact that
20 you and the Governor for a period of months continued to sing
21 the praises of these contracts, okay, they were the greatest
22 thing since the invention of the electric light bulb, is the
23 fact that you continued, and the Governor continued, over a
24 period of months to say how proud you were of the contracts,
25 does that undercut at all your argument before FERC or before a
26 court if a lawsuit is filed?

27 MR. FREEMAN: I don't think so. I don't think so
28 at all, because the facts are that the market has now told us

1 what a right price should be. And we didn't have that evidence
2 until the price came down.

3 I think it was also helpful -- let me just say
4 this on the record -- I think it was helpful that --

5 CHAIRMAN BURTON: The whole hearing's been on the
6 record.

7 MR. FREEMAN: I understand that.

8 But it was helpful --

9 SENATOR JOHNSON: Why wasn't I informed?

10 [Laughter.]

11 MR. FREEMAN: It was helpful that we got
12 criticism from the Legislature and our critics to help make the
13 case before FERC that these -- that we're entitled to lower
14 rates. The public process does work.

15 And I think it was useful that we got input from
16 people in high places and otherwise to encourage us to go to
17 FERC.

18 SENATOR JOHNSON: Senator Karnette.

19 SENATOR KARNETTE: No questions.

20 SENATOR JOHNSON: You know, I referred earlier a
21 couple of times to the movie, "A Few Good Men," and Jack
22 Nicholson.

23 I just feel constrained to say that another movie
24 comes to mind. I mean, much of your testimony kind of puts me
25 in mind of "Austin Powers, International Man of Mystery," that
26 we're going to keep a lot of this secret.

27 And I see a consistent pattern here of
28 underestimating the intelligence of the people of California,

1 and an unwillingness to share with the people of California what
2 was done in terms of these contracts, what the real implications
3 of these contracts were. To share with the people of California
4 really what the Los Angeles Department of Water and Power was
5 getting in terms of the electricity they were selling to the
6 state. And frankly, certainly questions raised about, if not
7 actual conflicts of interest, a lack of sensitivity to the need
8 to not just comply with the letter of the law, but the spirit of
9 the law as well with respect to any potential conflicts of
10 interest.

11 And it's difficult for me to think that we're
12 being asked to confirm you to incredibly, extraordinarily
13 important position, and you sit there and tell us: I don't know
14 that I didn't file my Statement of Economic Interests on time; I
15 didn't know that I was being fined; I didn't know that the
16 taxpayers of California were being expected to pay that fine on
17 my behalf; and to indicate that you didn't know what was
18 happening at the L.A. Department of Water and Power, that you'd
19 given instructions that it be 15 percent plus cost, but maybe
20 they didn't do.

21 How can I be assured that instructions you give
22 in this position will be followed, and that you're going to pay
23 enough attention to know whether they're being followed or not?
24 It's a pretty big pill to swallow, sir.

25 MR. FREEMAN: The records of my performance is
26 out there, and I'd have to rest on it. I feel that I have
27 improved the situation at every position that I have been in.

28 And as far as the Department of Water and Power

1 is concerned, I knew quite well what was going on. We reduced
2 the debt by \$3 billion. I was working for the people of the Los
3 Angeles, and we did a very good job.

4 I think I will be working for people of
5 California in this job, and we will work just as hard, and try
6 to be just as successful.

7 SENATOR KARNETTE: I have one comment, Senator
8 Burton.

9 Everybody's been referring to movies. I look
10 forward to a very good murder mystery based on this, because I
11 read all of Margaret Truman's, and all of Ludlum's, and all
12 those. And this is an excellent scenario. I don't know who
13 would be murdered --

14 [Laughter.]

15 SENATOR KARNETTE: I also want to say, this
16 gentleman is from the same part of the country I am, Senator
17 Johnson, and you probably could tell that from the way he
18 talks.

19 The TVA, I had relatives that worked in that
20 area. And he even knows Bill Paxton, who was editor of the
21 Padooka Sun Democrat, and I mean, that is unusual. Not very
22 many people knew him.

23 CHAIRMAN BURTON: Did you bring any family with
24 you, David? That's just a yes or no.

25 MR. FREEMAN: No, sir.

26 CHAIRMAN BURTON: Good.

27 [Laughter.]

28 CHAIRMAN BURTON: Witnesses in support.

1 MR. WHITE: Mr. Chairman and Members, John White,
2 representing the Center for Energy Efficiency and Renewable
3 Technologies.

4 We support Dave Freeman's --

5 CHAIRMAN BURTON: How about the NRDC?

6 MR. WHITE: And the Natural Resources Defense
7 Council, Cheryl Carter, she had to leave. Thank you for
8 reminding me, Senator. She stayed the whole time.

9 I just want to say that we have participated both
10 in the enactment of Senator Burton's legislation that created
11 the Power Authority, and in the process of implementation of
12 that statute.

13 And we believe that under Mr. Freeman's
14 stewardship, the process has been open to everyone. There has
15 been a lot of listening. And I think if you look at the quality
16 of the investment plan document, as it has evolved, and as it
17 has been criticized, and as it has been battered back and forth,
18 it has been a good process.

19 And we think that not only Mr. Freeman but the
20 other members of the Board are responsible for the quality of
21 that work product. And I believe that going forward, that the
22 Power Authority and Mr. Freeman have much to offer us, and we
23 are particularly eager to see the emphasis on renewable energy
24 efficiency in the investment plan.

25 Thank you.

26 MS. SPELLISCY: Thank you, Mr. Chair and
27 Members. Sandra Spelliscy with the Planning and Conservation
28 League. We are also here to support the nomination of Mr.

1 Freeman as Chair, and as well as the other nominees to the Board
2 today.

3 We also very worked with the Authority on the
4 investment plan. We're very supportive of the vision that they
5 laid out in terms of conservation, efficiency, and renewables.
6 We hope to work with the Board in the future in order to
7 implement that vision.

8 Thank you.

9 CHAIRMAN BURTON: Other witnesses in support?

10 MR. CONATY: Good afternoon, Members. Pete
11 Conaty, representing the California Coalition of Utility
12 Employees, representing the employees that work for the
13 investor-owned utilities and the municipal utilities that were
14 charged with keeping the lights on during that terrible energy
15 crisis.

16 CHAIRMAN BURTON: Was there a responsibility to
17 drive the price of the contracts down?

18 MR. CONATY: No. It wasn't our job to do that.

19 CHAIRMAN BURTON: Just keep the lights on.

20 MR. CONATY: That's right, yes, sir.

21 CHAIRMAN BURTON: A fine job they did.

22 MR. CONATY: Yes, sir. Thank you very much.

23 CHAIRMAN BURTON: Thank you.

24 MR. CONATY: It kind of reminds me --

25 SENATOR JOHNSON: Not another movie.

26 [Laughter.]

27 MR. CONATY: No, I was going -- an old expression
28 about it. It was: It's hard to remember your job is to drain

1 the swamp when you're up to your ass in alligators. That's where
2 we were last year. And it's taken us a while to get out of it,
3 but we're fully in support of Mr. Freeman and the Power
4 Authority.

5 Thank you.

6 CHAIRMAN BURTON: Witnesses in opposition?

7 I believe that some of the points that were
8 raised by Senator Johnson have merit.

9 I personally believe that the main direction had
10 to be to keep the lights on, because we did sign contracts, you
11 know, as quick as we can and as long as we can, and under the
12 best conditions that we could.

13 But I think that those of us that were at any
14 meetings dealing with this problem, as I was, as Senator Brulte
15 was, who by and large, we could put his quote in the record.

16 Do you have that quote? Anyway, he thought you
17 were hot stuff. Here it is. "Dave Freeman is a smart person
18 who," oh, well. See, this is the catch, "who has forgotten more
19 about energy --"

20 [Laughter]

21 CHAIRMAN BURTON: "-- than most people have ever
22 learned."

23 But then he comes back with, "If you're going to
24 create a Public Power Authority, someone like Freeman is the
25 type of guy you want running it," end of quote.

26 And he probably left out, "But I don't really
27 think there should be a Public Power Authority."

28 [Laughter.]

1 CHAIRMAN BURTON: But anyway, I think that for
2 this job, for what we have to do as a public Power Authority to
3 be there to pick up the slack, that you're the person to do the
4 job. I would hope that you learn from not just from the hearing
5 but from some of the other things that happened that we want to
6 do this thing right, and we want to do it careful.

7 With that, I'll move the nomination.

8 SECRETARY WEBB: Senator Karnette.

9 SENATOR KARNETTE: Aye.

10 SECRETARY WEBB: Karnette Aye. Senator Knight.

11 SENATOR KNIGHT: No.

12 SECRETARY WEBB: Knight No. Senator Romero.

13 SENATOR ROMERO: Aye.

14 SECRETARY WEBB: Romero Aye. Senator Johnson.

15 SENATOR JOHNSON: No.

16 SECRETARY WEBB: Johnson No. Senator Burton.

17 CHAIRMAN BURTON: Aye.

18 SECRETARY WEBB: Burton Aye. Three to two.

19 CHAIRMAN BURTON: Congratulations, David.

20 MR. FREEMAN: Thank you, sir.

21 CHAIRMAN BURTON: That was just a warm up for Don
22 Vial.

23 We'll have a short recess, a five-minute recess.

24 [Thereupon a brief recess was taken.]

25 CHAIRMAN BURTON: Sunne McPeak is next.

26 MS. McPEAK: Do you want me to make a statement,
27 Mr. Chairman?

28 CHAIRMAN BURTON: We've got your statement for

1 record, so why don't you just highlight it.

2 MS. McPEAK: I will be very brief.

3 Mr. Chairman and Members of the Committee, I
4 appreciate the opportunity to appear here today and answer your
5 questions.

6 I am honored to have the opportunity to serve on
7 the California Consumer Power and Conservation Finance
8 Authority, and do think that the mission that is charged to the
9 Authority is an important one for the State of California to
10 accomplish, and that is to have a secure power future and to
11 have an adequate supply of reserve.

12 I do think that the work we have done to date
13 with the energy resource investment plan is also helping put
14 California on the right path towards achieving that adequate
15 supply and reserve capacity in the most cost effective and
16 environmentally responsible manner to optimize conservation,
17 efficiencies, and to get to scale on renewables, and to
18 strategically look for where we need peaker capacity to meet
19 constraints in transmission today.

20 I would welcome the opportunity to answer your
21 questions, and hope that as the Power Authority continues to
22 meet, that we have more engagement with the Legislature and a
23 lot of dialogue about how we best achieve, as one of the energy
24 agencies working in concert with the other power entities in
25 California, how we best achieve a reliable, affordable power
26 supply for the state.

27 CHAIRMAN BURTON: Are you still on the Board of
28 Directors of Bridge.

1 MS. McPEAK: I am.

2 CHAIRMAN BURTON: Senator Johnson.

3 SENATOR JOHNSON: Thank you, Mr. Chairman. I'll
4 be very brief.

5 Ms. McPeak, I've known you since you and I
6 debated on a few occasions in the battle over the Peripheral
7 Canal, more than 20 years ago.

8 I know that you are an intelligent, capable
9 individual.

10 I hope that if you've been listening to the
11 discussion on the earlier nominee, that you would be impressed
12 with two things: The need to go the extra mile in terms of
13 meeting not only the letter but the spirit of the law with
14 respect to potential conflicts; and I would hope that ought of
15 that you also took one other lesson, and that is the need to
16 exercise some independent judgment.

17 I know that it's been said that we in the
18 Legislature, our job is to implement the Governor's vision. And
19 the earlier nominee indicated that had in his previous position,
20 we felt enormous pressure.

21 I didn't get to ask him, or didn't take the time
22 to ask him, if that meant he would be easily subjected to
23 pressure from the Governor.

24 But I hope and he, and all the members, will
25 exercise independent judgment in terms of doing what's right for
26 the people of California, and not what is reflected in some
27 survey or some focus group that politically, this is the thing
28 to do.

1 I intend to support your nomination, but I hope
2 that you'll take those two messages away with you.

3 MS. McPEAK: I do. I do, Senator Johnson.

4 CHAIRMAN BURTON: Senator Knight.

5 SENATOR KNIGHT: Did you lose that debate or not?

6 MS. McPEAK: I think it was a real draw.

7 SENATOR JOHNSON: Lost the debate, but won the
8 election.

9 [Laughter.]

10 SENATOR KNIGHT: Thank you.

11 MS. McPEAK: Thank you.

12 CHAIRMAN BURTON: Senator Karnette.

13 SENATOR KARNETTE: No questions, but I like that
14 blue.

15 CHAIRMAN BURTON: Do you have any family here
16 with you?

17 MS. McPEAK: I have extended family that I would
18 like to claim. Steve Roberti took the time to be here today.
19 He's a long time friend of labor and the immediate past
20 Secretary's representative in Region Nine for Department of
21 Labor.

22 CHAIRMAN BURTON: Witnesses in support.

23 And for the record, John White and the other
24 Planning and Conservation League supported all the nominees, as
25 do you, I suspect. Thank you.

26 MR. CONATY: You're welcome, sir. Put me down
27 for all of them, sir.

28 CHAIRMAN BURTON: Yes.

1 Witnesses in opposition? Hearing none, move the
2 nomination. Call the roll.

3 SECRETARY WEBB: Senator Karnette.

4 SENATOR KARNETTE: Aye.

5 SECRETARY WEBB: Karnette Aye. Senator Knight.

6 SENATOR KNIGHT: Aye.

7 SECRETARY WEBB: Knight Aye. Senator Johnson.

8 SENATOR JOHNSON: Aye.

9 SECRETARY WEBB: Johnson Aye. Senator Burton.

10 CHAIRMAN BURTON: Aye.

11 SECRETARY WEBB: Burton Aye. Four to zero.

12 CHAIRMAN BURTON: Leave the roll open for Senator
13 Romero.

14 Congratulations, Sunne.

15 MS. McPEAK: Thank you.

16 [Thereafter, SENATOR ROMERO

17 added her Aye vote, making the

18 final vote 5-0 for confirmation.]

19 CHAIRMAN BURTON: John Stevens.

20 MR. STEVENS: Good afternoon, Mr. Chairman and
21 Senators.

22 I'm not going to discuss what's all ready been
23 discussed in terms of the function, purpose, role, and the
24 planning processes for the Power Authority.

25 I simply am honored to serve with other very
26 competent Directors. Look forward to that continuing role.

27 I have a unique situation, though, and that is
28 that I'm a legislative staff person. And because of that, I'm

1 not sure whether that's a positive or a negative under the
2 circumstances, but because of that, it poses some interesting
3 questions. Those questions, I think, have been raised by the
4 Rules Committee staff.

5 I did want to note that I have sought information
6 from Legislative Council. I have a written opinion, which I'd
7 be happy to provide to the Rules Committee Members, that
8 indicates that there is no inherent conflict, legal conflict, in
9 me both serving as a legislative staff person and as a member of
10 this Power Authority.

11 It does point out that I cannot use state
12 resources: my time, state paid time, computer or other
13 equipment, that kind of thing, on behalf of the Power Authority
14 business. And clearly, I continue to be, have been, and will
15 continue to be subject to the FPPC's and political formats
16 requirements to file any documents and disclose any financial or
17 economic interests.

18 Unfortunately, I have very little to disclose.
19 And I've made that document available, I think, to the
20 Committee.

21 With that, sir, I simply ask for the support of
22 the Senate and Chair.

23 CHAIRMAN BURTON: I would think that this
24 probably is a first. I don't know, but I would think it is.

25 I think, one, how are you going to deal? You're
26 the top guy for the Speaker. There's an issue dealing with
27 either the Power Authority, or something in the energy area that
28 would, you know, give power over to somebody else.

1 You know, you're fine with me. I just think
2 you're in kind of a semi-untenable position. If the Speaker
3 asks you something, you say, "Well, I can't really talk about
4 that," and then he's going to wonder why he's paying you.

5 Something probably will come up. How can you
6 even deal with it?

7 MR. STEVENS: Part of that has to do with the job
8 that I have. The Speaker maintains a large staff of policy
9 consultants. They are responsible to deal with the committees,
10 with the bills, legislation, and budget related matters.

11 CHAIRMAN BURTON: But you're the number one
12 person, whatever the issue is, even if it's not your bailiwick.

13 I don't think you can answer it, because who
14 knows.

15 MR. STEVENS: It's my intention, Senator, to
16 simply indicate to him, as I all ready have, and he's fine with
17 this, and that is, on issues dealing with the Power Authority
18 either directly, budgetarily, or legislative, I won't be
19 involved in those issues.

20 CHAIRMAN BURTON: But I just think it's going to
21 be difficult.

22 So, what do you do the day that there's a
23 meeting. Do they meet? Is that what you guys do, you have
24 meetings?

25 MR. STEVENS: Uh-huh.

26 CHAIRMAN BURTON: So that day, you go off
27 Assembly payroll, on per diem for the Power Authority?

28 MR. STEVENS: Let me explain that, too.

1 CHAIRMAN BURTON: How do you deal with that?

2 MR. STEVENS: The rules, as you know, require
3 that Assembly employees provide 35 hours of work time a week.
4 That's at the Member's discretion to determine when those are.

5 My Member has indicated to me that when Power
6 Authority meetings occur, if I'm working 35 hours a week at
7 another scheduled time, that I can that time off for that
8 purpose.

9 CHAIRMAN BURTON: I understand that, but reading
10 council's opinion, like for legality's sake, do you have to
11 track of that and say, "I'm off," for your own benefit?

12 I don't really care for a legislative staffer who
13 only works 35 hours a week myself.

14 MR. STEVENS: Right, right.

15 For my purposes, I usually complete 35 hours of
16 work a week by close of business on Wednesday, as many do.

17 CHAIRMAN BURTON: Right. In other words, I guess
18 the question is, you don't have to --

19 MR. STEVENS: No, I don't have to, according to
20 counsel, I do not have to maintain a record.

21 CHAIRMAN BURTON: Now, what if the secretary, or
22 whoever it is of the commission, notified you something? Like
23 you said, you can't use a computer, right? So, they e-mailed
24 you something in the Speaker's office. Then they're supposed to
25 charge that?

26 How they can they deal with stuff that's like, it
27 seems to me, too stupid to even merit dealing with?

28 MR. STEVENS: I think the rule on that is, if

1 they were to send something to me, and it arrived on my e-mail,
2 I would probably notify them not to do that again. I have a
3 home e-mail. They can easily send it to me there, or they could
4 call me on the telephone, and I could call them back on a
5 non-state resource.

6 CHAIRMAN BURTON: This is why it's silly.

7 Why don't you check to see if you could put, you
8 know, a non-Assembly state line at your desk, or something. I
9 don't know.

10 I just think it's going to be very complicated
11 for you.

12 MR. STEVENS: Senator, it poses the same concerns
13 that it does for legislative staff relative to political
14 activity. So, I view it and treat it in the same way.

15 CHAIRMAN BURTON: I also know of no legislative
16 staff who engages in political activity.

17 MR. STEVENS: Exactly, sir. You're making my
18 point.

19 CHAIRMAN BURTON: I think maybe you ought to
20 check with counsel, see if you could put a phone in so you can
21 deal with that.

22 I don't envy you trying to figure out how not to
23 get in trouble over answering a telephone call.

24 Senator Johnson.

25 SENATOR JOHNSON: I agree, Mr. Chairman. This
26 is, in my experience, a little bit of uncharted waters. I've
27 looked over the opinion as well.

28 I would urge you in the strongest possible terms

1 to keep meticulous records, and be prepared to document that,
2 because, as the Chairman says, it in some ways seems kind of
3 silly, but it's very clear that legally, there has to be that
4 firewall established.

5 MR. STEVENS: Senator, I appreciate that.

6 I did hear your comments earlier as well.

7 SENATOR JOHNSON: Thank you.

8 CHAIRMAN BURTON: Senator Romero.

9 SENATOR ROMERO: No questions.

10 CHAIRMAN BURTON: Senator Knight.

11 SENATOR KNIGHT: Just a couple.

12 John, if you do get into a position where it
13 comes untenable, or you have a problem with legislation versus
14 the Power Authority, would you consider resignation?

15 MR. STEVENS: Absolutely. If it becomes a
16 situation --

17 SENATOR KNIGHT: Which one would you resign?

18 CHAIRMAN BURTON: Which one pays the most?

19 MR. STEVENS: This is a voluntary position, sir.
20 So, I'd be more than happy to relinquish the one with the least
21 pay.

22 SENATOR KNIGHT: Thank you.

23 CHAIRMAN BURTON: Senator Karnette.

24 SENATOR KARNETTE: No questions.

25 CHAIRMAN BURTON: Do you have any family with
26 you, John?

27 MR. STEVENS: No.

28 CHAIRMAN BURTON: Witnesses in support. Same

1 group.

2 Witnesses in opposition. Same group.

3 Move the nomination.

4 SECRETARY WEBB: Senator Karnette.

5 SENATOR KARNETTE: Aye.

6 SECRETARY WEBB: Karnette Aye. Senator Knight.

7 SENATOR KNIGHT: Aye.

8 SECRETARY WEBB: Knight Aye. Senator Romero.

9 SECRETARY WEBB: Romero Aye. Senator Johnson.

10 SENATOR JOHNSON: Aye.

11 SECRETARY WEBB: Johnson Aye. Senator Burton.

12 CHAIRMAN BURTON: Aye.

13 SECRETARY WEBB: Burton Aye. Five to zero.

14 CHAIRMAN BURTON: Congratulations, John.

15 MR. STEVENS: Thank you.

16 CHAIRMAN BURTON: What advice during the time
17 from April 20th, 2000, to June 1st, 2001, exactly what advice
18 did you give the Governor on energy? Don't answer.

19 Don Vial.

20 MR. VIAL: I welcome the opportunity to be
21 here. Obviously, I am very proud to be and eager to be on the
22 Power Authority to bring what experience I may have to restore
23 the viability of our electric utility system.

24 I'm here to answer your questions. I have a
25 rather long record of involvement in the energy field, and
26 utility field.

27 I have followed the restructuring effort after I
28 left the Commission. I had many reservations about how we were

1 doing it, but we did it. And now we're living with the reality
2 of repairing some of the problems, and I'm happy to be part of
3 that effort.

4 CHAIRMAN BURTON: Senator Johnson.

5 SENATOR JOHNSON: Since you were seated right
6 over there, I'll just incorporate by reference my earlier
7 comments about the very strong admonition that in this role, you
8 exercise some independent judgment, and that you be particularly
9 sensitive to the potential for conflicts of interest.

10 We're dealing with enormously important issues.

11 MR. VIAL: I totally agree with you, and I share
12 those feelings. I think I have a reputation of showing
13 independence in my political -- in my public policy life.

14 CHAIRMAN BURTON: Senator Romero.

15 SENATOR ROMERO: No questions.

16 CHAIRMAN BURTON: Senator Karnette.

17 SENATOR KARNETTE: I'd just like to comment, your
18 personal background looks very interesting. You've served under
19 various administrations; isn't that true?

20 MR. VIAL: That's true.

21 SENATOR KARNETTE: Under Republicans and
22 Democrats.

23 MR. VIAL: Yes.

24 SENATOR KARNETTE: That's good.

25 CHAIRMAN BURTON: Any family with you, Don?

26 MR. VIAL: No, they're not.

27 CHAIRMAN BURTON: Witnesses in support, the
28 same. Witnesses in opposition, the same.

1 Move the nomination.

2 SECRETARY WEBB: Senator Karnette.

3 SENATOR KARNETTE: Aye.

4 SECRETARY WEBB: Karnette Aye. Senator Knight.

5 SENATOR KNIGHT: Aye.

6 SECRETARY WEBB: Knight Aye. Senator Romero.

7 SENATOR ROMERO: Aye.

8 SECRETARY WEBB: Romero Aye. Senator Johnson.

9 SENATOR JOHNSON: Aye.

10 SECRETARY WEBB: Johnson Aye. Senator Burton.

11 CHAIRMAN BURTON: Aye.

12 SECRETARY WEBB: Burton Aye. Five to zero.

13 CHAIRMAN BURTON: Congratulations, Don.

14 MR. VIAL: Thank you.

15 [Thereupon this portion of the
16 Senate Rules Committee hearing
17 was terminated at approximately.

18 3:47 P.M.]

19 --ooOoo--
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